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,

Plaintiff,

JEFFREY EPSTEIN,

Defendant.
_____/

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

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.
_____/

C.M.A., **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,

Plaintiff,

JEFFREY EPSTEIN et al,

Defendants.
_____/

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

JANE DOE NO. 101,

Plaintiff,

JEFFREY EPSTEIN

Defendant.
_____/

CASE NO.: 09-80591-CIV-MARRA-JOHNSON

JANE DOE NO. 102,

Plaintiff,

JEFFREY EPSTEIN,

Defendant.
_____/

CASE NO.: 09-80656-CIV-MARRA/JOHNSON

EPSTEIN'S MEMORANDUM OF LAW IN OPPOSITION TO JANE DOE'S MOTION FOR INJUNCTION RESTRAINING FRAUDULENT TRANSFER OF ASSETS, APPOINTMENT OF A RECEIVER TO TAKE CHARGE OF PROPERTY OF EPSTEIN, AND TO POST A $15 MILLION BOND TO SECURE POTENTIAL JUDGMENT

Defendant, JEFFERY EPSTEIN ("Epstein"), by and through his undersigned counsel, submits this Memorandum of Law in Opposition to Plaintiff's, JANE DOE ("Jane Doe"), Motion for Injunction Restraining Fraudulent Transfer of Assets, Appointment of a Receive to Take Charge of Property of Epstein, and to Post a $15 Million Bond to Secure Potential Judgment (DE #165) ("Injunction Motion"), and states:

I. INTRODUCTION

Jane Doe filed her Injunction Motion (DE #165) on June 19, 2009 seeking an injunction to restrain any transfer of assets by Epstein, appointment of a receiver to take charge of Epstein's property and a $15,000,000 bond to secure her potential judgment in this action. The Injunction Motion is essentially a veiled and improper attempt to circumvent the statutory requirements for pre-judgment attachment set forth in Fla. Stat. §76.01 *et seq.* Nowhere in her 18-page motion does Jane Doe cite any authority supporting the relief she requests – not for an injunction, not for appointment of a receiver and not for the posting of a $15,000,000 bond.

The Injunction Motion is premised on the wholly unsupported contention that Epstein is fraudulently transferring his assets. Jane Doe cites to purported facts such as Epstein being a billionaire, having financial sophistication and international contacts, as well as invocation of his constitutional rights under the Fifth Amendment in response to discovery requests, to support her fraudulent transfer claim. Jane Doe has not identified one asset transferred by Epstein nor pointed to one scintilla of evidence to suggest Epstein is fraudulently transferring his assets. Rather, she asks the Court to presume Epstein is fraudulently transferring his assets because he asserted his Fifth Amendment privilege is response to Jane Doe's Request for Admissions 6, 21 and 22. See Epstein's Response to Jane Doe's Request for Admissions attached as Exhibit C to Injunction Motion (DE #165). Based on this unsupported presumption of fraudulent transfer, Jane Doe asks the Court to impose significant and unjustified restraints on Epstein's assets. Simply put, Jane Doe is improperly seeking assurance she will be able to collect a potential judgment. Most importantly, there is no legal authority supporting ***any*** of the

relief requested by Jane Doe. For the following reasons, the Court must deny Jane Doe's Injunction Motion.

II. JANE DOE'S STATEMENT OF MATERIAL FACTS IS BASED ON SPECULATION AND HEARSAY AND CONTAINS NO MATERIAL "FACTS"

Jane Doe's "Statement of Material Facts" relies heavily on the affidavit Jane Doe's own counsel. See Affidavit of Paul Cassell, Esq., attached as Exhibit A to the Injunction Motion (DE #165). Mr. Cassell's affidavit is riddled with hearsay, speculation, conjecture and unsupported assumptions and does not contain one material "fact" based on his personal knowledge. The majority of Mr. Cassell's assertions in his affidavit are based on a 2005 *Vanity Fair* article (the "2005 Vanity Fair Article"). See Vicky Ward, "The Talented Mr. Epstein," *Vanity Fair* <http://vickyward.com/wordpress/archives/30>, (January 24, 2005; accessed June 24, 2009). Mr. Cassell's affidavit is essentially a recitation of irrelevant, speculative and hearsay statements contained in an article published over four years ago. The Court should disregard Mr. Cassell's affidavit in determining the Injunction Motion. See e.g. U.S. v. Baker, 432 F.3d 1189, 1211-12 (11th Cir. 2005) (holding that newspapers articles were inadmissible double hearsay when offered to prove the truth of their contents – the identity of the gunman); Dollar v. State, 685 So. 2d 901, 903 (Fla. 5th DCA 1996) (holding that a newspaper article, introduced to prove the truth of out of court statements contained therein, constitutes inadmissible hearsay); Frasher v. Fox Distributing of S.W. Fla., Inc., 813 So. 2d 1017, 1020 (Fla. 2d DCA 2002) (holding that an affidavit supporting a prejudgment writ of attachment "must not be based on hearsay or the plaintiff's subjective beliefs but rather on the plaintiff's personal knowledge of the

defendant's actions," citing Unique Caterers, Inc. v. Rudy's Farm Co., 338 So. 2d 1067, 1071 (Fla. 1976))

In his affidavit, Mr. Cassell states that "[i]t appears that defendant Jeffery Epstein is an extremely wealthy individual." See Affidavit of Paul Cassell ¶2. Mr. Cassell's affidavit goes on to state that Epstein "has great skills in trading in international currency markets" and therefore "it is reasonable to infer that he has significant financial sophistication." Id. ¶4. This appearance of extreme wealth and sophistication in international financial matters is based on inadmissible hearsay newspaper reports, Wikipedia, and the 2005 Vanity Fair Article.

Mr. Cassell asserts that Epstein's "real mentor [Steven Hoffenberg] was sent to federal prison for twenty years for bilking investors out of more than $450 million on one of the largest Ponzi schemes in American history." Id. ¶5. First, the foregoing statement has absolutely no relevance to the instant case, except to attempt to link Epstein to an individual convicted of operating a Ponzi scheme. The 2005 Vanity Fair Article reports on Epstein's business dealings with Steven Hoffenberg during the 1980's and merely notes that Hoffenberg is "currently … serving a 20-year sentence" for operating a Ponzi scheme. Importantly, despite all the questionable and speculative suggestions and inferences in the 2005 Vanity Fair Article, it does not in any way link Epstein to the Ponzi scheme. Yet, Mr. Cassell tries to forge a link between Epstein and Hoffenberg's Ponzi scheme, ultimately to cast Epstein in a negative light and suggest he, like Mr. Hoffenberg, is committing financial crimes. Even *Vanity Fair* did not attempt to make this untenable connection. Similarly, Mr. Cassell states that Epstein was questioned by the SEC in 1981 regarding an insider trading investigation at Bear Stearns involving

Italian and Swiss investors. Id. ¶6. This statement is obviously intended to associate Epstein with Bear Sterns, a tarnished financial institution apparently involved in questionable international transactions in the 1980's, to somehow suggest Epstein is fraudulently transferring his assets overseas. It is worth noting that the questioning occurred approximately ***twenty-eight years ago***, in 1981, and that Epstein was ***merely questioned*** because the SEC believed "Epstein had information on insider trading at Bear Sterns." The foregoing assertions in Mr. Cassell's affidavit have absolutely no bearing on Jane Doe's Injunction Motion.

Then, Mr. Cassell goes beyond the pale and resorts to celebrity gossip to suggest Epstein may be transferring his assets to Israel. Specifically, in paragraph 8 of his affidavit, Mr. Cassell cites a May 2008 *Vanity Fair* article and states "***rumors*** were circulating (to celebrities such as Dustin Hoffman, Alec Baldwin and filmmaker Michael Mailer) that Epstein was moving all of his considerable assets to Israel." Id. ¶8 (emphasis added). The article actually stated "[t]alk that Epstein had moved ***himself and his assets*** to Israel reached the ears of such luminaries as Harvey Weinstein...." See Vicky Ward, "You *Will* Have Jeffrey Epstein to Kick Around!" *Vanity Fair* <http://www.vanityfair.com/online/daily/2008/05/vicky-ward-you.html>, (May 7, 2008; accessed June 24, 2009) (emphasis added). Not only does Mr. Cassell rely on utterly unreliable celebrity "rumors," he cites it out of context to suggest that Epstein is fraudulently transferring assets to Israel.

Some other irrelevant, speculative and/or hearsay statements in Mr. Cassell's affidavit include: (1) Epstein may own a Boeing 727 with a trading room (See Affidavit of Paul Cassell ¶7); (2) Epstein has travelled internationally with Donald Trump and is

close friends with Prince Andrew and therefore it is reasonable to infer Epstein has international financial contacts (Id. ¶9); (3) Epstein reportedly limited his clients to those with a net worth over $1 billion and kept all his deals and clients secret (Id. ¶4); (4) the current lawsuits could cause Epstein to financial ruin (Id. ¶10); and (5) Mr. Cassell attests he was "advised" that Epstein works at managing his financial interests while on a "work release" program (Id. ¶11). Mr. Cassell also admittedly relies on ***unsubstantiated reports*** that Epstein is transferring assets out of the country with the intent to make it impossible for Jane Doe and other plaintiffs to satisfy a potential judgment. Id. ¶12.

Based on the foregoing irrelevant, speculative and unreliable hearsay information primarily gleaned and taken out of context from a four-year-old *Vanity Fair* article as well as unsubstantiated reports from unnamed individual(s), Mr. Cassell concludes that Epstein "might" be transferring his assets overseas with the intent to defeat any judgment that might be entered against him. Id. ¶12. Mr. Cassell does not attest to one material fact of which he has personal knowledge that would have any bearing on Jane Doe's Injunction Motion. For all of the foregoing reasons, the Court should disregard Mr. Cassell's affidavit.

III. JANE DOE IS NOT ENTITLED TO INJUNCTIVE RELIEF

A. Jane Doe Is Not Entitled To an Adverse Inference Based on Epstein's Invocation of His Fifth Amendment Privilege

Jane Doe is not entitled to an adverse inference based on Epstein's invocation of his Fifth Amendment privilege in response to Jane Doe's Request for Admissions 6, 21 and 22. A two-step inquiry must be undertaken to determine whether such an inference is appropriate. See U.S. v. Custer Battles, LLC, 415 F.Supp.2d 628, 633 (E.D. Va. 2006).

First, the court must determine whether there was a valid basis for invocation of the privilege, which requires only "the existence of a plausible possibility that the person might be prosecuted in this country." Id. Jane Doe would be hard pressed to contend that Epstein's invocation of his Fifth Amendment privilege is invalid. However, in an abundance of caution, Epstein incorporates by reference the argument and authority set forth in his section "III" of his Motion to Stay And Or Continue Action for Time Certain Based on Parallel Civil and Criminal Proceedings with Incorporated Memorandum of Law (DE # 24).

The second step requires an assessment of whether the requested inferences, which are a form of evidence, comply with the Federal Rules of Evidence. See Custer Battles, LLC, 415 F.Supp.2d at 634. That is, they must be relevant, reliable and not unfairly prejudicial, confusing or cumulative. Id. An "adverse inference can only be drawn when ***independent evidence exists*** of the fact to which the party refuses to answer." Id. at 635 (emphasis added) (citations omitted). In Custer Battles, LLC, unlike the instant case, the court found the record contained "ample evidence of Morris' involvement in the [fraudulent] billing … which in turn ensures that the proposed adverse inferences, should the jury choose to draw them, are not unreliable." Id. See also Avirgan v. Hull, 932 F.2d 1572, 1580 (11th Cir. 1991) (holding that "the negative inference to be drawn from the assertion of the fifth amendment does not substitute for evidence needed to meet the burden of production"); Eagle Hospital Physicians, LLC v. SRG Consulting, Inc., 561 F.3d 1298, 1304 (11th Cir. 2009) (recognizing that "dismissal following the assertion of the Fifth Amendment violates the Constitution where the

inferences drawn from Fifth-Amendment-protected silence are treated as a substitute for the need for evidence on an ultimate issue of fact," citing Avirgan, supra).

As belabored throughout this memorandum, Jane Doe cites no independent evidence that Epstein is fraudulently transferring assets. Accordingly, an adverse inference would be wholly unreliable and is clearly impermissible under the instant circumstances.

Additionally, granting the relief sought by Jane Doe based solely on an adverse inference would violate Epstein's Fifth Amendment rights. See LaSalle Bank Lake View v. Seguban, 54 F.3d 387, 389 (7th Cir. 1995) (noting that "the Supreme Court has prohibited practices that are coercive in that they make the exercise of the privilege 'costly,'" citing Spevack v. Klein, 385 U.S. 511, 515 (1967)). As the LaSalle court explained, "deeming an allegation of a complaint [or Jane Doe's allegation that Epstein is fraudulent transferring assets] to be admitted based on the invocation of the Fifth Amendment privilege without requiring the complainant to produce evidence in support of its allegations would impose too great a cost and exceed the authorization of Baxter [v. Palmigiano, 425 U.S. 308 (1976)]." See LaSalle Bank Lake View, 54 F.3d at 391; see also National Acceptance v. Bathalter, 705 F.2d 924, 931-32 (7th Cir. 1983) (holding that judgment imposing liability cannot rest solely upon a privileged refusal to admit or deny at the pleading stage. The cost to a defendant of treating his claim of privilege as an admission would be to excuse a plaintiff of presenting proof of his claim; "[w]e think Baxter indicates that this is too great a cost"). As Jane Doe fails to present any independent evidence of fraudulent transfer, the Court must deny her request for an adverse inference and ultimately deny her Injunction Motion.

B. Jane Doe Has Not Properly Pled a Claim for Nor Requested Injunctive Relief

Jane Doe does not properly plead a claim for an injunction. While the title of Jane Doe's motion appears to request injunctive relief, nowhere in the motion does Jane Doe set forth the elements of an injunction. Moreover, the *ad damnum* clause of the motion does not request injunctive relief. It is well settled that the party seeking an injunction must establish: (1) substantial likelihood of success on the merits; (2) irreparable injury unless an injunction issues; (3) the threatened injury outweighs the harm to the defendant if the injunction issues; and (4) that the injunction will not disserve the public interest. See N. Am. Med. Corp. v. Axiom Worldwide, Inc., 522 F.3d 1211, 1217 (11th Cir. 2008). An injunction is a drastic and extraordinary remedy which should be granted sparingly and only after the moving party has ***alleged and proven*** facts entitling it to relief. See Shands at Lake Shore, Inc. v. Ferrero, 898 So. 2d 1037, 1038 (Fla. 1st DCA 2005); Wade v. Brown, 928 So. 2d 1260, 1262 (Fla. 4th DCA 2006).

As a threshold matter, the Court should disregard Jane Doe's motion for injunctive relief as she has not properly pled the claim. She does not even attempt to allege any of the elements set forth in Axiom Worldwide, Inc., supra, and does not request injunctive relief in her motion. Moreover, in her First Amended Complaint (DE #38), Jane Doe does not seek an injunction nor does she assert a claim under Fla. Stat. §726.101 *et seq.* See Lawhon v. Mason, 611 So. 2d 1367, 1368 (Fla. 2d DCA 1993) (holding that a party must "***file suit*** under the Uniform Fraudulent Transfer Act" to enjoin fraudulent transfer of assets) (emphasis added).

As Jane Doe has not properly pled a claim for injunctive relief, the Court should deny Jane Doe's motion, if in fact she intended to make one, for an injunction.

C. Injunctive Relief is Unavailable as Jane Doe Seeks Only Money Damages

Even assuming *arguendo* Jane Doe properly pled the elements of an injunction, cases in which the plaintiff seeks only to recover money damages do not fall within the jurisdiction of equity and injunctive relief is therefore unavailable. See Rosen v. Cascade Int'l, Inc., 21 F.3d 1520, 1529-30 (11th Cir. 1994) (holding that the district court lacked the general equitable authority to issue an injunction where the plaintiff sought only the award of monetary damages). Jane Doe's First Amended Complaint (DE #38) does not seek equitable relief. Rather, Jane Doe demands judgment against Epstein for compensatory damages (Counts I, II, III and V), punitive damages (Counts I – III), attorney's fees (Counts II, IV and V), minimum damages authorized by law and all actual damages sustained (to be trebled as authorized by law) (Count IV) and such other relief as the Court deems just and proper (Counts I – V).[1] See *ad damnum* clauses of Counts I – V, Plaintiff's First Amended Complaint (DE #38). The Court should deny Jane Doe's Injunction Motion as her pleadings do not invoke the Court's equity jurisdiction.

D. The Court is Without Authority to Issue an Injunction Restraining Epstein's Use of His Assets

Jane Doe is not entitled to the injunctive relief requested. Preliminary injunctive relief freezing a defendant's assets to establish a fund with which to satisfy a potential judgment for money damages is not an appropriate exercise of a federal district court's

[1] The Eleventh Circuit in Rosen "rejected appellees' suggestion that they successfully invoked the district court's equitable jurisdiction through their requests for any additional relief as may appear 'just and proper' at the conclusion of each complaint. The mere incantation of such boilerplate language does not convert a legal cause of action into a legitimate request for equitable relief." 21 F.3d at 1526.

authority. See Rosen, 21 F.3d at 1530. It is well settled by a long and unbroken line of Florida cases that in an action at law for money damages there is no judicial authority for an order requiring the deposit of the amount in controversy into the registry of the court, or indeed for any restraint upon the use of a defendant's assets prior to the entry of judgment. Id. at 1531 (citations omitted); see also Proctor v. Eason, 651 So. 2d 1301, 1301-02 (Fla. 2d DCA 1995). In Rosen, plaintiffs brought a securities fraud action to recover money damages. See Rosen, 21 F.3d at 1522. To ensure they could collect their potential judgment, plaintiffs moved for, and the court granted, preliminary injunctive relief freezing the defendant's assets. Id. at 1525. The Eleventh Circuit vacated the injunction and held the district court did not have the authority to issue an injunction simply to tie up the defendant's assets during the pendency of the litigation. The court noted, "[t]he general federal rule of equity is that a court may not reach a defendant's assets unrelated to the underlying litigation and freeze them so that they may be preserved to satisfy a potential judgment." Id. at 1527. The court went on to cite an oft-quoted passage from the United States Supreme Court in De Beers Consol. Mines, Ltd. v. United States, 325 U.S. 212, 221 (1945):

> To sustain the challenged order would create a precedent of sweeping effect. This suit, as we have said, is not to be distinguished from any other suit in equity. What applies to it applies to all such. Every suitor who resorts to chancery for any sort of relief by injunction may, on a mere statement of belief that the defendant can easily make away with or transport his money or goods, impose an injunction on him, indefinite in duration, disabling him to use so much of his funds or property as the court deems necessary for security or compliance with its possible decree. And, if so, ***it is difficult to see why a plaintiff in any action for a personal judgment in tort or contract may not, also, apply to the chancellor for a so-called injunction sequestrating***

> ***his opponent's assets pending recovery and satisfaction of a judgment in such a law action. No relief of this character has been thought justified in the long history of equity jurisprudence.***

(Emphasis added).

Accordingly, the court held that preliminary injunctive relief freezing a defendant's assets to establish a fund with which to satisfy a potential money judgment is not an appropriate exercise of a district court's authority. See Rosen, 21 F.3d at 1530.

The court also noted the injunctive remedy sought was equivalent to a writ of attachment. Id. at 1530. "Rule 64 [governing seizure of persons or property], and not Rule 65 (which governs injunctions generally), provides the standard for evaluating a request for preliminary injunctive relief that is, in reality, no more than a request for prejudgment attachment." Id. (Citations omitted). In actions at law, plaintiffs "possess an adequate, exclusive prejudgment remedy for the sequestration of assets under [Fla. Stat. §76.01 *et seq.*] provided that they can satisfy the enumerated statutory grounds for relief. Accordingly, ***the use of injunctive relief as a substitute for the remedy of prejudgment attachment, with its attendant safeguards, is improper***." Id. at 1531 (emphasis added) (citations omitted). See also SME Racks, Inc. v. Sistemas Mecanicos Para, Electroncia, S.A., 243 Fed. Appx. 502, 504 (11th Cir. 2007) (affirming district court's refusal to grant a preliminary injunction freezing defendant's assets).

Similarly, in Lawhon v. Mason, 611 So. 2d 1367, 1368 (Fla. 2d DCA 1993), plaintiffs filed a "motion to prohibit defendant from transferring assets." The motion cited plaintiffs' extensive injuries, defendant's perceived lack of insurance coverage, a belief that defendant had "substantial assets," and that defendant "had hired personal

counsel skilled in the area of execution of judgment." Id. The trial court granted plaintiffs' motion, which the Second District Court of Appeals characterized as "a series of temporary injunctions without the necessary showing of entitlement to injunctive relief." Id. The Second District quashed the order granting the injunction and held that "[a]n injunction cannot be used to enforce money damages or prevent a party of disposing of assets prior to the conclusion of an action at law." Id. See also Briceno v. Bryden Investment, Ltd., 973 So. 2d 614, 616 (Fla. 3d DCA 2008) (noting that in Florida, an injunction cannot be entered to prevent a party of disposing of assets prior to judgment, even where the party seeking the injunction alleges the defendant may be dissipating assets; a judgment for money damages is adequate and injunctive relief is improper) (citations omitted). The Lawhon court also noted that the order was similar to a pre-judgment writ of attachment. 611 So. 2d at 1368. "A writ of attachment cannot issue unless there is a debt due or an existing debt not yet due" and plaintiff must file a "verified complaint or sworn allegation that the defendant is removing or disposing of property. ***Hearsay or 'subjective belief' will not suffice***." Id. (Emphasis added). See also Frasher, 813 So. 2d at 1020 (holding that an affidavit supporting a prejudgment writ of attachment "must not be based on hearsay or the plaintiff's subjective beliefs but rather on the plaintiff's personal knowledge of the defendant's actions, citing Unique Caterers, 338 So. 2d at 1071).

In the instant case, Jane Doe seeks the same relief the courts in Rosen and Lawhon prohibited – an injunction freezing Epstein's assets during the pendency of the litigation so Jane Doe will have a fund with which to satisfy her potential judgment. If the court granted the relief sought by Jane Doe based on a "mere statement of belief that

[Epstein] can easily make away with or transport his money or goods … it is difficult to see why a plaintiff in any action for a personal judgment in tort or contract may not, also, apply to the chancellor for a so-called injunction sequestrating his opponent's assets pending recovery and satisfaction of a judgment in such a law action." See DeBeers, 325 U.S. at 221. Since Jane Doe is not seeking prejudgment attachment under Fla. Stat. §76.01 *et seq.*, there is no authority to enjoin Epstein's use of his assets. The Court must therefore deny Jane Doe's Injunction Motion.

IV. JANE DOE'S MOTION FOR APPOINTMENT OF A RECEIVER AND FOR A $15,000,000 BOND IS NOT SUPPORTED BY LAW

Jane Doe moves the Court, pursuant to Fla. Stat. §726.108(1)(c), to appoint a receiver to take charge of and account for Epstein's assets. However, Jane Doe's reliance on the foregoing statute is misplaced in that §726.108(1)(c) ***does not*** provide for the appointment of a receiver to take charge of the debtor's assets. To the contrary, the statute permits "[a]ppointment of a receiver to take charge of the asset transferred or of other property ***of the transferee***." See Fla. Stat. §726.108(1)(c) (emphasis added). Epstein is clearly not a "transferee" and the court should deny Jane Doe's motion to appoint a receiver to take control of Epstein's assets.

Jane Doe also improperly attempts to obtain an accounting of Epstein's assets through the receiver. She states, "[a] receiver is the only way to start to block further dissipation of assets – by, first, gaining control over Epstein's assets and then, second, making an accounting of what assets of Epstein's remain in this country or are otherwise subject to control by this Court." See Injunction Motion (DE #165) at 15. However, Jane Doe does not properly plead a claim for an accounting or set forth ***any facts*** which

would entitle her to an accounting; she just asks for one. See Florida Software Systems, Inc. v. Columbia/HCA Healthcare Corp., 46 F.Supp.2d 1276, 1285 (M.D. Fla. 1999) (holding that a party seeking an equitable accounting must show the existence of a fiduciary relationship or a complex transaction and must demonstrate that the remedy at law is inadequate); Nautica Int'l Inc. v. Intermarine USA, L.P., 5 F.Supp.2d 1333, 1343 (S.D. Fla. 1998) (holding that plaintiff failed to state a claim for equitable accounting as plaintiff failed to allege the remedy at law was inadequate). The Court should deny Jane Doe's motion to the extent it requests an accounting as she has not properly pled a claim for an accounting.

In addition, not unlike her motion for an injunction and to appoint a receiver to take control of Epstein's assets, there is no authority for Jane Doe's motion to require Epstein post a $15,000,000 bond to secure a potential judgment. Jane Doe does not cite one case or statute that addresses posting a bond to secure a potential judgment. Instead, Jane Doe references cases generally addressing the court's power to grant equitable relief.[2] The request for a bond is akin to Jane Doe's motion for an injunction in that it seeks to "establish a fund with which to satisfy a potential judgment for money damages," which the court in Rosen held was beyond the authority of the district court. See Rosen, 21 F.3d at 1530. "There is simply no judicial authority for an order requiring the deposit of the amount in controversy into the registry of the court, or indeed for any restraint upon the use of a defendant's assets prior to the entry of judgment." Id. at 1531 (citations omitted). Accordingly, the Court should deny Jane Doe's motion to require Epstein to post a $15,000,000 bond.

[2] See also section III.B, supra, discussing the impropriety of granting equitable relief where there are no equitable claims pending before the court.

V. RELIEF UNDER THE UFTA IS INAPPROPRIATE AS THERE IS NO EVIDENCE EPSTEIN IS FRAUDULENTLY TRANSFERRING ASSETS

The crux of Jane Doe's Injunction Motion is premised on the unsupported assumption that Epstein is fraudulently transferring his assets. Jane Doe asks the Court to infer, based on Epstein's invocation of his Fifth Amendment privilege in response to Jane Doe's Request for Admissions 6, 21 and 22, and the irrelevant, hearsay and speculative assertions in Paul Cassell's affidavit, that Epstein is fraudulently transferring assets. Jane Doe has not, and cannot, point to any evidence which would suggest Epstein fraudulently transferred anything. For the reasons set forth below, Jane Doe is not entitled to any relief under Fla. Stat. §726.101 *et seq.* – the Uniform Fraudulent Transfer Act ("UFTA").

A. Jane Doe's Burden of Proof Under the UFTA

1. The "Badges of Fraud" and Proof of Fraudulent Intent

To prove a fraudulent transfer, Jane Doe must demonstrate: (1) a transfer of property has in fact occurred; (2) the property transferred belonged to the debtors; (3) the transfer occurred within certain statutory time periods; and (4) the debtor made the transfer with the intent to hinder, delay or defraud creditors. See In re Leneve, 341 B.R. 53, 56 (S.D. Fla. 2006). Courts typically resort to the "badges of fraud," to determine fraudulent intent. Id. at 61. The Eleventh Circuit has adopted the badges of fraud contained in Fla. Stat. §726.105(2) in determining a debtor's actual intent with regarding a transfer. See In re Ramsurat, 361 B.R. 246, 254 (M.D. Fla. 2006) (citations omitted). The badges of fraud are whether: (a) the transfer or obligation was to an insider; (b) the debtor retained possession or control of the property transferred after the transfer; (c) the transfer or obligation was disclosed or concealed; (d) before the transfer was made or

obligation was incurred, the debtor had been sued or threatened with suit; (e) the transfer was of substantially all of the debtor's assets; (f) the debtor absconded; (g) the debtor removed or concealed assets; (h) the value of the consideration received by the debtor was reasonably equivalent to the value of the asset transferred or the amount of the obligation incurred; (i) the debtor was insolvent or became insolvent after the transfer was made or obligation incurred; and (j) the transfer occurred shortly before or shortly after a substantial debt was incurred. See In re Ramsurat, 361 B.R. at 254; In re Dealers Agency Services, Inc., 380 B.R. 608, 613 (M.D. Fla. 2007) (recognizing that the Eleventh Circuit adopted the "badges of fraud" to determine fraudulent intent); Fla. Stat. §726.105(2).

Moreover, Fla. Stat. §726.106, which applies to creditors whose claims arose before the transfer was made or the obligation was incurred, provides that a transfer is fraudulent "if the debtor made the transfer or incurred the obligation without receiving a reasonably equivalent value … and the debtor was insolvent at that time or the debtor became insolvent as a result of the transfer or obligation." See Fla. Stat. §726.106(1). Subsection (2) provides that the transfer is fraudulent "if the transfer was made to an insider for an antecedent debt, the debtor was insolvent at that time, and the insider had reasonable cause to believe that the debtor was insolvent." See Fla. Stat. §726.106(2).

2. Jane Doe's "Means, Motive and Opportunity" Test is Unfounded

Despite the well-settled statutory framework to determine fraudulent transfer, Jane Doe appears to have conveniently made up her own test, likely because Jane Doe cannot point to a single badge of fraud contained in Fla. Stat. §726.105(2) that would

apply to Epstein. Indeed, Jane Doe cannot identify a single transfer made by Epstein. Yet Jane Doe urges the Court to conclude Epstein is fraudulently transferring assets because he purportedly has the means, the motive and the opportunity to do so, citing United States v. Sparks, 265 F.3d 825, 830 (9th Cir. 2001). See Injunction Motion (DE #165) at 11. Sparks is completely inapposite as it concerned whether probable cause for ***an arrest*** can be based on a showing of means, motive and opportunity. No court has recognized the "means, motive and opportunity test" to determine fraudulent transfer.

B. Jane Doe Cannot Make The Requisite Showing for Relief Under the UFTA; There Is No Evidence of Fraudulent Transfer

As set forth above, there are various ways, set forth in the UFTA and applicable case law, in which a creditor could prove a debtor is fraudulently transferring assets. Jane Doe fails to point to one iota of evidence that Epstein is fraudulently transferring assets. In In re Stewart, 280 B.R. 268 (M.D. Fla. 2001), proceedings were brought to set aside certain transfers of the debtor as fraudulent to creditors. The bankruptcy trustee claimed, among other things, that the debtor made a series of transfers to his wife totaling $392,691. Id. at 273. There were deposits into the wife's securities accounts in the sum of $392,691 which were not explained by the entries on the account statements. Id. at 274. The trustee concluded the funds must have originated from the debtor and pointed to the debtor's income to show that he had the financial means and the financial wherewithal to supply the funds. Id. No other evidence was presented to establish the debtor transferred $392,691 to his wife. Under these circumstances, the court held that the trustee had "not established the existence of any transfer of the Debtor's interest in property as required by … §726.105 of the Florida Statutes." Id. See also In re Energy

Smart, Inc., 381 B.R. 359, 382 (M.D. Fla. 2007) (holding that bankruptcy trustee failed to establish a fraudulent transfer claim as the trustee failed to establish that the debtor made any transfers).[3]

Moreover, the court refused to enter a final default judgment against the debtor because the complaint contained "virtually no allegations of fact." See In re Stewart, 280 B.R. at 285. The court noted that "[n]owhere in the Complaint does Barbara Stewart allege that an identifiable asset was transferred on a specific date pursuant to a specific transfer. Further, nowhere in the Complaint does Barbara Stewart allege any specific facts which, even if admitted, would support a finding that a transfer was made with the actual intent to defraud a creditor." Id. at 285-86.

As in In re Stewart, Jane Doe does not allege "an identifiable asset was transferred on a specific date pursuant to a specific transfer" or allege any facts which "would support a finding that a transfer was made with the actual intent to defraud a creditor." See In re Stewart, 280 B.R. at 285-86. Moreover, the only "evidence" Jane Doe presents to prove fraudulent transfer is her assertion that Epstein "has the financial means and the financial wherewithal" to fraudulently transfer his assets. As the court in In re Stewart rejected such an argument and found that the trustee did not establish the existence of a transfer of property as required by Fla. Stat. §726.105, so should the Court here.

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[3] In so holding, the court cited 11 U.S.C. §548. See In re Energy Smart, Inc., 381 B.R. 359 at 382. Section 548 of the Bankruptcy Code and §726.105, Florida Statutes, "are substantially the same, with the result that 'the analysis of what must be show to prove actual fraud under both the bankruptcy and state law fraudulent transfer provisions is the same.'" See In re Dealer's Agency Services, Inc., 380 B.R. at 612 (citations omitted).

V. CONCLUSION

For the foregoing reasons, Epstein respectfully requests the Court deny Jane Doe's Injunction Motion.

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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 13th day of July 2009

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