

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 10-CV-21586-ASG

PODHURST ORSECK, P.A.

Plaintiff,

vs.

JEFFREY EPSTEIN,

Defendant.

PLAINTIFF'S RESPONSE TO DEFENDANT'S AMENDED NOTICE AND MOTION
FOR LEAVE TO DEPOSIT FUNDS INTO THE REGISTRY OF THE COURT

Plaintiff, Podhurst, Orseck, P.A., submits this Response to the Amended Notice and Motion For Leave to Deposit Funds Into the Registry of the Court filed by Defendant, Jeffrey Epstein, and asserts as follows.

Plaintiff does not oppose Defendant's Motion to Deposit Funds Into the Court Registry, but offers this Response to provide some context to Defendant's seemingly prompt action in seeking to deposit \$2 million into the Court's registry. Defendant would have this Court interpret this prompt action as evidence of compliance and reasonableness. Those who have dealt with Defendant, however, including Plaintiff, will understand it for what it is -- Defendant's pattern and practice of complying and reacting only when his hand is forced, and only after months of delays and foot dragging. Depositing \$2 million into court is not payment, but an attempt to continue a pattern of non-payment.

This pattern was evident when he was required under the Non-Prosecution Agreement ("NPA") to formalize his plea of guilty and sentencing before a state court and yet delayed that action for several months. He eventually finalized his guilty plea and sentencing, but only after the

United States Attorney's Office informed him in a letter to his counsel that it was "concerned about Mr. Epstein's non-performance," and that the "delayed guilty plea and sentencing...[was] unacceptable to the [United States Attorney's] Office." *See Letter dated December 6, 2007 from United States Attorney's Office to Defendant's counsel, which is attached to this Response as Exhibit 1.*

Defendant's pattern of delay and non-performance under the NPA was also evident when he contested liability in a victim's suit alleging a violation of 18 U.S.C. § 2255 by moving to dismiss all counts in the Complaint. This was a clear breach of the NPA, pursuant to which Defendant not only agreed to not contest liability, but also waived his right to contest jurisdiction so long as the claims were being brought pursuant to § 2255. Only when he was placed on notice by the United States Attorney's Office that "there has been a breach in the filing [of the motion to dismiss]. . . And we are providing notice to Mr. Epstein today," did Defendant withdraw his motion contesting liability. *See Transcript of Hearing before The Honorable Kenneth Marra, dated June 17, 2009, excerpts of which are attached to this Response as Exhibit 2.*

And, finally, this pattern of delay and non-performance is evident by his actions in this case. Despite months and months of refusing to pay Plaintiff most of the fees required to be paid under the NPA, he now promptly seeks to deposit \$2 million into the registry of the Court. Defendant's history, however, shows that he has done this not because he is reasonable or wants to comply, but because his hand has been forced by the filing of this lawsuit.

In sum, while Plaintiff does not object to Defendant's Motion, it is important that his Motion be placed in the context of Defendant's prior pattern and practice. Defendant has been in breach of his NPA since last year, when he completely ceased paying the attorney's fees required to be paid under the NPA. His Motion to deposit the \$2 million is neither evidence of reasonableness nor cures

his continuing breach.

Plaintiff will finally note that Defendant seeks to deposit only \$2 million in the registry of the Court. Plaintiff's Complaint, however, makes clear that it will seek damages in *excess* of \$2 million.

Dated: May 26, 2010

Respectfully Submitted,

PODHURST ORSECK, P.A.
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By: /s/ Peter Prieto

Steven C. Marks (FB# 516414)
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John Gravante, III (FB# 617113)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on May 26, 2010, 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 counsel of record either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

/s/ Peter Prieto
Peter Prieto

SERVICE LIST

Podhurst Orseck, P.A. vs. Jeffrey Epstein
United States District Court
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