

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

CASE NO. 502008CA028058XXXMB AD



Plaintiff,

v.

JEFFREY EPSTEIN,

Defendant.

_____ /

**DEFENDANT EPSTEIN'S ANSWER & AFFIRMATIVE
DEFENSES TO PLAINTIFF'S SECOND AMENDED COMPLAINT**

Defendant, JEFFREY EPSTEIN, (hereinafter "EPSTEIN"), by and through his undersigned attorneys, files his Answer to the Second Amended Complaint 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, without knowledge and deny.

4. As to the allegations in paragraph 4, 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.

5. As to the allegations in paragraph 5, 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

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6. As to the allegations in paragraphs 6, admit that Defendant Epstein was born in 1953 but deny remaining allegations in paragraph 6.

7. - 15. As to the allegations set forth in paragraphs 7 through 15 of the Second Amended Complaint, Defendant asserts the 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.

Count I

16. 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 15 above herein.

17. – 22. As to the allegations set forth in paragraphs 17 through 22 of the Second Amended Complaint, Defendant asserts the 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.

Count II

23. 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 15 above herein.

24. - 28. As to the allegations set forth in paragraphs 24 through 28 of the Second Amended Complaint, Defendant asserts the 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.

Count III

29. 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 15 above herein.

30. – 32. As to the allegations set forth in paragraphs 30 through 32 of the Second Amended Complaint, Defendant asserts the 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.

Count IV

33. In response to the allegations of paragraph 33, Defendant realleges and adopts his responses to paragraphs 1 through 15 of the Second Amended Complaint set forth in paragraphs 1 through 15 above herein.

34. - 38. In response to the allegations of paragraphs 34-38 of the Second Amended Complaint, Defendant asserts the 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.

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 alleged, Plaintiff impliedly consented to the acts alleged by not objecting, 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 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 an affirmative defense, Defendant owed no duty of care to the Plaintiff.

9. As an affirmative defense, Plaintiff has failed to state a cause of action against Defendant Epstein in Count I – "Negligence Per Se, violation of criminal statutes." The referenced statutes do not create a private right of action.

10. As to Count III, Plaintiff has failed to state a cause of action for "Intentional Infliction of Emotional Distress" as Plaintiff repleads the same alleged facts as in her other counts; thus, no separate cause of action is pled.

11. As an affirmative defense, Defendant Epstein did not agree to admit liability as set forth by Plaintiff in this action.

12. Under Count I, Defendant Epstein can only be responsible for his pro rata share of damage under Chapter 768 F.S., as some or all of the damages were caused by the negligence of Third Parties.

13. As to Count I, Plaintiff's damages should be reduced or barred by her own comparative negligence.

14. Any recovery by Plaintiff must be reduced by collateral sources pursuant to Chapter 768 F.S.

15. As to Plaintiff's claims for punitive damages, such claims are subject to the limitations as set forth in §768.72, et seq., Fla. Stat.

16. As to Plaintiff's claims for punitive damages, such claims are subject to the limitations as set forth in §768.73, Florida Statutes.

17. As to Plaintiff's claims for punitive damages, such claims are subject to the limitations as set forth in §768.735, Florida Statutes.

18. As to Plaintiff's claims for punitive damages, 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. Liggett Group, Inc., 945 So.2d 1246 (Fla. 2006). The Due Process Clause of the Fourteenth Amendment prohibits the imposition of grossly excessive or arbitrary punishments. U.S. Const, Amend. 5, Amend. 15.

19. As to Plaintiff's claims for punitive damages, 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.

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

Certificate of Service

I HEREBY CERTIFY that a true copy of the foregoing was sent by fax and U.S.

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(Counsel for Defendant Jeffrey Epstein)

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

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I HEREBY CERTIFY that a true copy of the foregoing was sent by fax and U.S.

Mail to the following addressees on this ^{19th} ~~6th~~ day of ^{August} ~~April~~, 2009:

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