

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

CASE NO. 502008CA028051XXXXMB AB

█
Plaintiff,

v.

JEFFREY EPSTEIN,

Defendant.
_____ /

DEFENDANT, JEFFREY EPSTEIN'S, MOTION TO CLARIFY RECORD

Defendant, JEFFREY EPSTEIN ("Mr. Epstein"), by and through his undersigned counsel moves this court for clarification of the record regarding representations made by Plaintiff's counsel, William Berger, Esq., at the September 23, 2009 hearing on Plaintiff's Motion for Protective Order, and as grounds therefore, would state:

1. Plaintiff's counsel was seeking a protective order precluding Mr. Epstein from attending the deposition of █.
2. At the hearing, the undersigned counsel for Mr. Epstein and Jack Goldberger, the criminal defense attorney who was in attendance at the plea and sentencing on June 30, 2008, represented to the Court that Judge Pucillo's no contact order dealt specifically with three victims who were identified in the state proceedings, in that the "list" of purported victims under the Non-Prosecution Agreement was not provided to Judge Pucillo on June 30, 2008 and in fact was not provided to Mr. Epstein's counsel until after the June 30, 2008 court hearing.
3. Mr. Berger who was not present at the plea or sentencing, and was reading only

the bare transcript stated "the representation concerning Judge Pucillo's ruling is completely false." See transcript, page 13, Exhibit "A" attached hereto. Mr. Berger's comments were inaccurate. While Judge Pucillo did have the Non-Prosecution Agreement; she never had the "list."

4. Attached hereto is the affidavit of Jack Goldberger who as referenced above, was at the Judge Pucillo hearing, and was the first attorney on behalf of Mr. Epstein to receive a copy of the "list" which was referenced in the Non-Prosecution Agreement. See Exhibit "B" hereto.

5. When the "list" was in fact provided to Mr. Goldberger, [REDACTED] specifically was not on the list. See affidavit of Jack Goldberger.

6. Any suggestion, either directly or by implication, that [REDACTED] ([REDACTED] is [REDACTED]) was on the list is debunked by the declaration of Asst. U.S. Attorney, Marie Villafana, dated July 9, 2008 in pertinent part (pages 1, 4, 6 and 7) attached as Exhibit "C" hereto Exhibit C, par. 12 specifically states:

12. On today's date, your Affiant provided the attached victim notifications to [REDACTED] and [REDACTED] via their attorney, Bradley Edwards (Exs. 6 & 7). A notification was not provided to [REDACTED] because the U.S. Attorney's modification limited Epstein's liability to victims whom the United States was prepared to name in an indictment. In light of [REDACTED]'s prior statements to law enforcement, your Affiant could not in good faith include [REDACTED] as a victim in an indictment and, accordingly, could not include her in the list provided to Epstein's counsel.

In the plea conference, June 30, 2008, there are reference to several victims at

page 20. However, that reference, is completely unrelated to the Non-Prosecution Agreement or the "list" referenced in the NPA. At no time during the course of the plea colloquy or the sentencing, is there ever a discussion of the "list" which was not available to Judge Pucillo, and therefore she was not in a position to nor did she intend to issue an order relating to a group of unknown people on a "list" which existed solely with the USAO's office until some time in early July of 2008.

WHEREFORE, Defendant Jeffrey Epstein moves this court for clarifying the record, and the erroneous and/or misleading statements made by Plaintiff's counsel.

Certificate of Service

I HEREBY CERTIFY that a true copy of the foregoing was sent by fax and U.S. Mail to the following addressees on this 6th day of November, 2009:

Brad Edwards, Esq.
Rothstein, Rosenfeldt, Adler
401 East Las Olas Boulevard
Suite 1650
Fort Lauderdale, FL 33301

[REDACTED]
Counsel for Plaintiff

Jack Alan Goldberger, Esq.
Atterbury, Goldberger, & Weiss, P.A.
250 Australian Avenue South, Suite 1400
West Palm Beach, FL 33401-5012
Fax: 561-835-8691
Co-Counsel for Defendant Jeffrey
Epstein

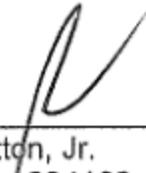
Jay Howell, Esq.
Jay Howell & Associates, P.A.
644 Cesery Boulevard
Suite 250
Jacksonville, FL 32211

[REDACTED]
904-680-1238 Fax
Co-counsel for Plaintiff

BURMAN, CRITTON, LUTTIER & COLEMAN, LLP
303 Banyan Boulevard, Suite 400
West Palm Beach, FL 33401

(561) 253-0164 Fax

By: _____


Robert Dr. Critton, Jr.
Florida Bar No. 224162
Michael J. Pike
Florida Bar No. 617296
(Counsel for Defendant Jeffrey Epstein)

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



Plaintiff,

vs.

CASE NO.

502008CA028051XXXXMBADD

JEFFREY EPSTEIN,

Defendant.



PROCEEDINGS BEFORE THE
HONORABLE DONALD HAFELE

September 23, 2009
8:50 a.m.

205 North Dixie Highway
Suite 11-B
West Palm Beach, Florida 33401

COLLEEN M. GRUFF-BROWN, RPR

EXHIBIT NO. A

DE-16 D



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

L.M.,
vs. Plaintiff,
JEFFREY EPSTEIN,
Defendant.

CASE NO.
502008CA028051XXXXBADD

PROCEEDINGS BEFORE THE
HONORABLE DONALD HAFELD

Wednesday, September 23, 2009
8:50 a.m. - 9:10 a.m.

205 North Dixie Highway
Suite 11-B
West Palm Beach, Florida 33401

COLLEEN M. GRUFF-BROCK, RPR

3

1 Proceedings in the Matter of [REDACTED] v. Epstein
2 Wednesday, September 23, 2009
3

4 THE COURT: [REDACTED] and Epstein.
5 MR. CRITTON: You get a good clear hearing now, no
6 problems with the lawyers.
7 MR. BERGER: Your Honor, good morning.
8 William J. Berger for the Plaintiff, [REDACTED] and
9 we're here on our client's motion for protective order.
10 Your Honor, there's procedural background that I'd
11 rather hope that we can avoid which is why everything
12 is sort of rush, rush, rush, as well as with the
13 filings.
14 THE COURT: Yeah. I knew this was filed,
15 yesterday I knew you were going to file something, but
16 I haven't had a chance to look at it.
17 MR. BERGER: I'm also going to ask the Court's
18 indulgence for a request that I have.
19 The basis of our motion for protective order is to
20 keep, the goal is to keep Mr. Epstein physically not
21 present at the deposition of our client.
22 The basis for the motion are two orders, one that
23 was entered by the sentencing judge which at the time
24 was Judge Pucillo, it's now in front of Judge Colbath
25 on Mr. Epstein's, the sex crimes he was convicted of

2

1 APPEARANCES OF COUNSEL
2

3 On behalf of the Plaintiff:

4 ROTHSTEIN, ROSENFELDT & ADLER
5 BERGER, WILLIAM J. ESQ.
6 225 NE Mizner Boulevard
7 Suite 875
8 Boca Raton, FL 33498
9 (561) 322-7780
10 (561) 544-6568
11 [REDACTED]
12

13 LEOPOLD KUVIN, P.A.
14 SPENCER T. KUBIN, ESQ.
15 2925 PGA Boulevard
16 Suite 200
17 Palm Beach Gardens, Florida 33410
18 (561) 515-1400
19 (561) 515-1401 - Fax
20 skubin@ [REDACTED]

21 On behalf of the Defendant:

22 BURMAN CRITTON LUTTIER & COLEMAN
23 ROBERT D. CRITTON, JR., ESQ.
24 303 Banyan Boulevard
25 Suite 400
West Palm Beach, Florida 33401
(561) 842-2820
(561) 844-5929 - Fax
[REDACTED]

ATTEBURY GOLDBERGER, et. al.
JACK A. GOLDBERGER, ESQ.
250 South Australian Avenue
Suite 1400
West Palm Beach, Florida 33401
(561) 859-8300
(561) 835-8691 - Fax
goldberger@ [REDACTED]

4

1 that contained a no contact order which we've quoted in
2 our motion.
3 They disagree with the interpretation of it as far
4 as whether he can be physically present as opposed to
5 having verbal or any indirect communication.
6 We think no contact means you stay away, you're
7 not physically present.
8 The second order that we base our motion on is
9 Judge Marra, the Federal judge who has the Federal
10 civil litigation similar to yours under a Federal
11 statute in which he entered a written no contact order,
12 and we have competing interpretations on whether that
13 means the gentleman can or cannot be physically present
14 at the deposition.
15 Your Honor, stepping back, and it took me a while
16 to focus on this, if you were asked and you were, and
17 you have jurisdiction to interpret both orders, there's
18 no question about it, but I think the prudent course of
19 conduct, and it's not in my papers, but I told
20 Mr. Critton a couple minutes ago that I was asking for
21 this, I'm requesting the Court to defer to allow us to
22 go in front of the sentencing judge, Judge Colbath, and
23 our clients have standing as victims under the Florida
24 constitution, to ask him for an interpretation of
25 whether the no contact order, if it's no contact of,



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1 MR. CRITTON: Absolutely.

2 MR. BERGER: We object to the Court's

3 consideration of that strenuously.

4 THE COURT: Well, again, I'm just asking for

5 anecdotal information because the name, there's no

6 names here so I'm not suggesting that --

7 MR. BERGER: Mr. Epstein paid for her attorney to

8 sit at that interview.

9 THE COURT: Again, I don't really want to be

10 interrupted, Mr. Berger, respectfully.

11 I just want to make sure I'm understanding who the

12 parties are and not so much trying to make a

13 determination as to whether or not there's any truth or

14 falsity or any intimidation relative to that statement,

15 it's just a matter, as I said, to try to align the

16 parties in a way that I can somehow make some type of

17 sense of the matter so I'd ask you not to interpret

18 again, please.

19 MR. CRITTON: Only on [REDACTED], she's the one who gave

20 the FBI statement.

21 I read your transcript from the hearing of May

22 22nd of '09 this year, you specifically said when you

23 were making a ruling in that case, I'm looking at this

24 statement from the FBI where she says Mr. Epstein's a

25 good guy, he's an awesome guy, there's never been a

10

1 problem, everything I did was consensual.

2 Now she's taking a very different position so

3 she's either perjured herself in interrogatories or

4 she's perjured herself to the FBI and even the United

5 States Attorney lawyers, but she basically said, again,

6 there's no affidavit from her that she says I'm going

7 to be intimidated or harassed.

8 And the Court will recall from last week that

9 Mr. Kuvin, we had come in front of the Court on a

10 question that was asked about the shape of

11 Mr. Epstein's penis. I've had Mr. Edwards ask at a

12 deposition how do you feel about when you had a finger

13 inside such and such at the time.

14 Again, we terminated that deposition, that's an

15 issue that's going to be in front of you and the Court

16 said at that time I can't tell you how to do your

17 discovery, I can't tell you what questions to ask, but

18 I'll put it into the perimeters.

19 So there's no affidavit from an expert which is

20 the pending motion in front of Judge Marra in court

21 where they filed actually an affidavit on behalf of an

22 expert that the person said I feel I may be intimidated

23 or embarrassed or whatever her circumstances were.

24 So there's nothing to the contrary. The FBI

25 statement stands, there's a strong standard that,

11

1 there's a very high standard, I gave the Court a case

2 called Ferrigno, F-e-r-r-i-g-n-o, it's at 495 So.2nd

3 886 and it basically says, the Court in that instance

4 said look, I'm not going to exclude party witnesses

5 from the deposition because they may, they may be able

6 to work off of each other to get their stories

7 straight.

8 The 2nd District in that case basically said

9 there's only one case out there that deals with

10 paparazzi and it involves the Onassis family, every

11 other case in Florida and every, and the rule is very

12 clear that the party, you can't exclude someone as a

13 means for one party to obtain an advantage over the

14 other so there's no case law that supports the

15 extraordinary remedy and the extraordinary burden that

16 they have under the circumstances.

17 Judge Marra's order deals with communications,

18 Mr. Epstein would be sitting in the room, he'd be

19 sitting a distance from the Plaintiff in this instance,

20 if in fact something did, inappropriate did occur

21 during the deposition such as it happens very

22 occasionally in depositions, Judge, Mr. Edwards or

23 Mr. Berger can say we're terminating the deposition and

24 it is a video deposition.

25 And finally, this happens in domestic cases all

12

1 the time, there's allegations of physical abuse and

2 verbal abuse and those depositions proceed without,

3 almost universally without incident. Including those

4 where an injunction against domestic violence has been

5 issued that said you can't get near anyone.

6 I would respectfully suggest that with a complete

7 lack of evidence under the circumstances, that

8 Mr. Epstein be allowed to attend. And Judge Pucillo's

9 order, and I have Mr. Goldberger here, dealt with three

10 victims --

11 THE COURT: You need to wrap up, please.

12 MR. CRITTON: It dealt specifically with three

13 victims, I don't understand criminal law, but she said

14 the victim, so if Mr. Goldberger could have 10 seconds

15 he could explain that because I don't understand it, I

16 understand it --

17 THE COURT: Ten seconds.

18 MR. GOLDBERGER: Thank you, Judge.

19 Just very briefly, the criminal case came out of

20 an indictment in which three witnesses testified in

21 front of the grand jury.

22 The victims in the criminal case are three

23 specific women. I will proffer to the Court that

24 Mr. Berger's client was not one of those three women so

25 the no contact order that Judge Pucillo entered in the



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1 demonstration that one or, one or more of the alleged
 2 victims, and I should use the word Plaintiff in this
 3 case and sorry for the utilization of alleged victim
 4 and alleged perpetrator, probably not the best way to
 5 go about this, Plaintiffs and Defendant would be the
 6 best way to approach it, but unless there is a
 7 demonstrable and evident reason to depart from the
 8 Court's ruling in this regard, then my ruling will stand
 9 for all of the Plaintiffs who are sought to be deposed.

10 Gentlemen, again, thank you. I do have to move
 11 on.

12 MR. CRITTON: Thank you for your help, Judge.

13 THE COURT: And I'll give you back your materials.
 14 And thank you.

15 MR. CRITTON: I appreciate you seeing us today.

16 (Whereupon, the hearing was concluded at 9:10
 17 a.m.)

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CERTIFICATE

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STATE OF FLORIDA)
 COUNTY OF PALM BEACH)

I, COLLEEN M. GRUFF-BROWN, RPR, certify that I was
 authorized to and did stenographically report the foregoing
 proceedings and that the transcript is a true and complete
 record of my stenographic notes.

Dated this 9th day of October, 2009.

 Colleen M. Gruff-Brown, RPR



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

CASE NO. 502008CA028051XXXXMB AB

█
Plaintiff,

v.

JEFFREY EPSTEIN,

Defendant.
_____ /

AFFIDAVIT OF JACK A. GOLDBERGER ESQUIRE

STATE OF FLORIDA) SS
COUNTY OF PALM BEACH)

BEFORE ME, the undersigned authority, personally appeared having personal knowledge and being duly sworn, deposes and says:

1. I, Jack A. Goldberger, have personal knowledge of the matters set forth herein. I am an attorney licensed to practice in the State of Florida since 1978. I am a partner with the law firm of Atterbury Goldberger & Weiss, P.A., located at One Clearlake Centre, Suite 1400, 250 Australian Avenue South, West Palm Beach, FL 33401.

2. My practice includes and specializes in the defense of criminal matters. I am board certified in criminal law. I have been and currently am the criminal defense attorney for JEFFREY EPSTEIN.

3. I was the attorney of record for Mr. EPSTEIN at the plea colloquy and sentencing that occurred on June 30, 2008.

4. I reviewed the transcript from the plea colloquy and sentencing which was attached to █'s Motion for Protective Order. I am well familiar with the transcript in that

EXHIBIT B

I was present.

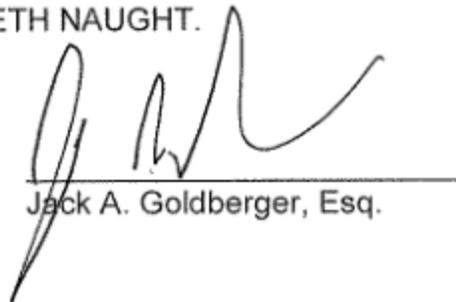
5. While the Non-Prosecution Agreement ("NPA") was discussed at that proceeding, at no time was the "list" referenced within the NPA presented to the Judge or to anyone else. As of June 30, 2008, I had not been provided a copy of the "list".

6. The first time I was provided a copy of the "list" referenced in the NPA was sometime after the June 30, 2008 hearing before Judge Pucillo.

7. The representation or suggestion made by Mr. Berger at the hearing on September 23, 2009 that the individuals on the USAO's "list" were incorporated into Judge Pucillo's ruling, is misleading and incorrect.

8. I am well familiar with the "list" and [REDACTED] is not listed as a "victim" on that "list".

FURTHER THE AFFIANT SAYETH NAUGHT.



Jack A. Goldberger, Esq.

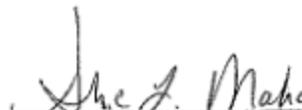
STATE OF FLORIDA

COUNTY OF PALM BEACH

I hereby Certify that on this day, before me, an officer duly authorized to administer oaths and take acknowledgments, personally appeared Jack A. Goldberger, Esquire, known to me to be the person described in and who executed the foregoing Affidavit, who acknowledged before me that he executed the same, that I relied upon the following form of identification of the above named person: (personally known), and that an oath was/was not taken.

WITNESS my hand and official seal in the County and State last aforesaid this 4th day of November, 2009.



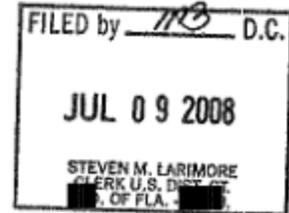

PRINT NAME Sheryll L. Mahoney
NOTARY PUBLIC/STATE OF FLORIDA
COMMISSION NO.
MY COMMISSION EXPIRES:

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 08-80736-Civ-Marra/Johnson

IN RE: JANE DOE,

Petitioner.



DECLARATION OF A. MARIE VILLAFANA
IN SUPPORT OF UNITED STATES' RESPONSE
TO VICTIM'S EMERGENCY PETITION FOR ENFORCEMENT
OF CRIME VICTIM RIGHTS ACT, 18 U.S.C. § 3771

1. I, A. Marie Villafaña, do hereby declare that I am a member in good standing of the Bar of the State of Florida. I graduated from the University of California at Berkeley School of Law (Boalt Hall) in 1993. After serving as a judicial clerk to the Hon. David F. Levi in Sacramento, California, I was admitted to practice in California in 1995. I also am admitted to practice in all courts of the states of Minnesota and Florida, the Eighth, Eleventh, and Federal Circuit Courts of Appeals, and the U.S. District Courts for the Southern District of Florida, the District of Minnesota, and the Northern District of California. My bar admission status in California and Minnesota is currently inactive. I am currently employed as an Assistant United States Attorney in the Southern District of Florida and was so employed during all of the events described herein.

EXHIBIT NO. C

S/AB

[REDACTED]

7. Although individual victims were not consulted regarding the agreement, several had expressed concerns regarding the exposure of their identities at trial and they desired a prompt resolution of the matter. At the time the agreement was signed in September 2007, [REDACTED] was openly hostile to the prosecution of Epstein. The FBI attempted to interview [REDACTED] in October 2007, at which time she refused to provide any information regarding Jeffrey Epstein. None of Attorney Edwards' clients had expressed a desire to be consulted prior to the resolution of the federal investigation.

[REDACTED]

11. On Friday, June 27, 2008, at approximate 4:15 p.m., your Affiant received a copy of the proposed state plea agreement and learned that the plea was scheduled for 8:30 a.m., Monday, June 30, 2008. Your Affiant and the Palm Beach Police Department attempted to provide notification to victims in the short time that Epstein's counsel had given us. Although all known victims were not notified, your Affiant specifically called attorney Edwards to provide notice to his clients regarding the hearing. Your Affiant believes that it was during this conversation that Attorney Edwards notified me that he represented [REDACTED], and I assumed that he would pass on the notice to her, as well. Attorney Edwards informed your Affiant that he could not attend but that someone would be present at the hearing. Your Affiant attended the hearing, but none of Attorney Edwards' clients was present.

12. On today's date, your Affiant provided the attached victim notifications to [REDACTED] and [REDACTED] via their attorney, Bradley Edwards (Exs. 6 & 7). A notification was not provided to [REDACTED] because the U.S. Attorney's modification limited Epstein's liability to victims whom the United States was prepared to name in an indictment. In light of [REDACTED]'s prior statements to law enforcement, your Affiant could not in good faith include [REDACTED] as a victim in an indictment and, accordingly, could not include her in the list provided to Epstein's counsel.

13. Furthermore, with respect to the Certification of Emergency, Attorney Edwards did not ever contact me prior to the filing of that Certification to demand the relief that he requests in his Emergency Petition. On the afternoon of July 7, 2008, after your Affiant had

already received the Certification of Emergency and Emergency Petition, I received a letter from Attorney Edwards that had been sent, via Certified Mail, on July 3, 2008. While that letter urges the Attorney General and the United States Attorney to consider "vigorous enforcement" of federal laws with respect to Jeffrey Epstein, it contains no demand for the relief requested in the Emergency Petition.

14. I declare under penalty of perjury, pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct to the best of my knowledge and belief.

Executed this 9th day of July, 2008.


A. Marie Villafaña, Esq.