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December 9, 2009

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BETTY STOKES
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JUSTICE COUNSEL

BY HAND DELIVERY

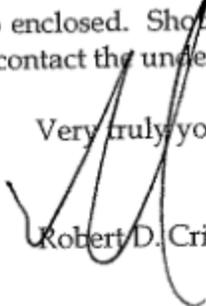
Judge Donald Hafele
Fifteenth Judicial Circuit
Palm Beach County Courthouse
[REDACTED]

Re: December 14, 2009 UMC Hearing
[REDACTED] v. Jeffrey Epstein
CASE NO.: 502008CA037319XXXXMB AM

Dear Judge Hafele:

Enclosed, please find Jeffrey Epstein's Response in Opposition to [REDACTED]'s Motion for Inspection and to Compel Discovery, which are set for hearing before Your Honor on December 14, 2009 at 8:30 a.m. The case law is also enclosed. Should your Honor have any questions or concerns regarding the foregoing, please contact the undersigned's office.

Very truly yours,


Robert D. Critton, Jr.

Enclosures

cc. Spencer Kuvin, Esq. (via facsimile w/o enclosures)
Jack A. Goldberger, Esq. (via facsimile w/o enclosures)

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

CASE NO. 502008CA037319XXXXMB AB

█,

Plaintiff,

v.

JEFFREY EPSTEIN,
█,

Defendants.

**EPSTEIN'S RESPONSE IN OPPOSITION TO MOTION FOR INSPECTION AND TO
COMPEL DISCOVERY AND MOTION FOR PROTECTIVE ORDER AND
INCORPORATED MEMORANDUM OF LAW**

Defendant, JEFFREY EPSTEIN ("Epstein"), by and through his undersigned attorneys, hereby files his Response in Opposition to Plaintiff's, █. (█), Motion for Inspection and to Compel Discovery (Photographs) (the "Request") (attached as **Exhibit "A"**) and further moves for a protective order pursuant to Fla. R. Civ. P. 1.280(c), and states:

I. Introduction

1. Mr. Epstein's deposition was set for September 2, 2009, and Mr. Epstein was in attendance for said deposition. Directly after asking Mr. Epstein his name, Mr. Kuvin then asked Mr. Epstein, "[i]s it true, sir, that you have what's been described as an egg-shaped penis." Accordingly, Mr. Kuvin immediately set the tone of the deposition in a sarcastic and demeaning manner in an effort to harass, embarrass, humiliate and intimidate Mr. Epstein. Mr. Kuvin continued with this line of questioning

by referencing a document that Mr. Kuvin did not provide to the witness or to undersigned counsel and then by asking the following: "[s]ir, according to the police department's probable cause affidavit, one witness described your penis as oval shaped and claim[ed], when erect, it was thick towards the bottom but was thin and small - - towards the head portion, and called it egg-shaped" It was clear that Mr. Kuvin's goal was to use the deposition process to embarrass, humiliate, intimidate and harass Mr. Epstein and thereafter contact the media and provide it with a copy of said deposition.

2. One day after the deposition and only a few days before the video of Epstein's deposition was released to the media, █, on September 3, 2009, served her Request seeking to photograph Epstein's penis. Obviously, this was done in an effort to bolster media attention and to harass, intimidate and humiliate Epstein.

3. Interestingly, Plaintiff's deposition has yet to occur, and her interrogatory responses and her Complaint do not provide that she ever saw Epstein's penis or that he penetrated her with his penis.¹ In fact, once █ deposition occurs it will be clear that she never saw Epstein's penis, which is consistent with what she told others. Accordingly, at least at this juncture, the request (as explained below) is irrelevant, harassing, embarrassing and not reasonably calculated to lead to the discovery of admissible evidence. Since █ deposition has not yet occurred, the Request and subsequent inspection can be utilized by her to bolster, fabricate and tailor her

¹ The Interrogatory Responses will be provided at the hearing if requested.

testimony such that it conforms to what, if anything, she would learn from the inspection and photographing.

4. Epstein objects to the Request on the following grounds:
 - a. Violation of the Due Process Clause of the Fifth and Fourteenth Amendments in that this Court is being asked to authorize a general search and seizure by a private party in violation of Epstein's right to privacy and due process;
 - b. Violation of the Fifth Amendment protection against self-incrimination;
 - c. Not relevant, material or reasonably calculated to lead to the discovery of admissible evidence; further, has the capacity to compromise the accuracy of the memories of █ and any other witness who is permitted to view the photo and is therefore in conflict with the parties interest in a trustworthy fact-finding process;
 - d. Overbroad, unduly burdensome, violation of constitutional right of privacy; and harassing;
 - e. May allow █ to fabricate and tailor her testimony before her deposition occurs; and
 - f. It is an Improper Medical Examination pursuant to Fla. R. Civ. Pro. 1.360, and Defendant has not placed any medical condition at issue.

II. The Request Violates Epstein's Fifth Amendment Rights Against Self – Incrimination

5. The Fifth Amendment privilege against self-incrimination “permits a person not to answer official questions put to him in any other proceeding, civil or criminal, formal or informal, where the answers might incriminate him in future proceedings.” See Edwin v. Price, 778 F.2d 668, 669 (11th Cir. 1985) (citing Lefkowitz v. Turley, 414 U.S. 70, 77 (1973)). The privilege is accorded liberal construction in favor of the right and extends not only to answers that would support a criminal conviction, but extends also to those answers which would furnish a link in the chain of evidence needed to prosecute the claimant for a crime. See Hoffman v. United States, 341 U.S. 479, 486 (1951). Information is protected by the privilege not only if it would support a criminal conviction, but also in those instances where “the responses would merely ‘provide a lead or clue’ to evidence having a tendency to incriminate.” See United States v. Neff, 615 F.2d 1235, 1239 (9th Cir.), cert denied, 447 U.S. 925 (1980).

6. Moreover, the act of production itself may implicitly communicate statements of fact and, for this reason, the Fifth Amendment privilege also encompasses the circumstances where the act of producing documents in response to a subpoena or production request has a compelled testimonial aspect. See United States v. Hubbell, 530 U.S. 27, 35-36 (2000). Thus, where the existence or location of the requested documents are unknown, or where production would “implicitly authenticate” the requested documents, the act of producing responsive documents is

considered testimonial and is protected by the Fifth Amendment. See In re Grand Jury Subpoena, 1 F.3d 87, 93 (2nd Cir. 1993).

7. In the instant case, █ requests, for example, to inspect Epstein's genitalia. See Exhibit "A". Any compelled "production" by Epstein in this regard would directly violate his Fifth Amendment rights in that he is implicitly being asked to authenticate same. This is not the same as asking Epstein to open his home to film the limited scope-pathways which █ allegedly took as Epstein, in that instance, is not being asked to authenticate or show anything. In this instance, however, Epstein would be required to perform a positive act by showing his genitalia which, in turn, would require him to authenticate same. If you accept █ allegations in her Request as true, photographing Epstein's genitalia could potentially provide a 'lead or clue' to evidence having a tendency to incriminate.

8. In Jane Doe No. 2 v. Epstein, Case No. 08-CIV-80119 MARRA/JOHNSON, the Court sustained Epstein's Fifth Amendment objections to several interrogatories asking Epstein to identify information potentially related to the case(s) including, but not limited to, all employees who performed work inside his Palm Beach residence, all other employees who came to the residence (Interrogatory Nos. 1 – 2), those who gave or were asked to give him massages (Interrogatories Nos. 3 – 6), information regarding the identity of persons who provided transportation services (Interrogatory No. 9), a list of Epstein's employees' telephone numbers (Interrogatory No. 12), any persons or witnesses who have knowledge or are in possession of physical evidence pertaining to the events in question (Interrogatories Nos. 13, 14 and 17), and

seeking information related to alleged sexual abuse or misconduct on a minor (Interrogatory No. 15). See August 4, 2009 Order on Plaintiff's Motion to Compel Answers to Interrogatories and Production of Documents. See *Infra* for Attachments.

9. If the Fifth Amendment protects Epstein from disclosing the identity of any person who has knowledge or are in possession of physical evidence (i.e. photographs, videos, written statements, etc.) pertaining the events in question (Interrogatory Nos. 13, 14 and 17 supra), it follows that Epstein's production of his genitalia by photograph also violates his Fifth Amendment rights.

10. Epstein has asserted his Fifth Amendment right in this matter. To the extent that right has been asserted with regard to the proposed questioning regarding the alleged shape of his genitalia, the Plaintiff will argue for an adverse inference relative to same. If the █ is afforded the adverse inference, that is where the Fifth Amendment halts █ further inquiry relative to her Request. Holding otherwise would require Epstein to produce himself, which could provide a clue or a link in the chain of evidence used to convict him and would therefore violate his Fifth Amendment rights. See *infra*.

11. As this court knows, Epstein's Fifth Amendment concerns are not unwarranted. In a federal companion case, Jane Doe No. 2 v. Epstein, Case No. 08-CIV-80119 MARRA/JOHNSON, in the United States District Court for the Southern District of Florida, United States Magistrate Judge Linnea R. Johnson found, "[i]n 2008, Epstein entered into a Non-Prosecution Agreement with the United States Attorney General's Office for the Federal Southern District of Florida and the State Attorney's

Office for Palm Beach County. Under the terms of the Non-Prosecution Agreement, any criminal prosecution against Epstein is deferred as long as he abides by the certain terms and conditions contained therein. If at any time the United State's Attorney's Office has reason to believe Epstein is in breach of the Agreement, it need only provide Epstein's counsel with notice of the breach and then move forward with Epstein's prosecution. ***Accordingly, the undersigned would agree with Epstein ... that the fact there exists a Non-Prosecution Agreement does not mean that Epstein is free from future criminal prosecution, and that in fact, 'the threat of prosecution is real, substantial and present.'***" See August 4, 2009 Order on Plaintiff's Motion to Compel Answers to Interrogatories and Production of Documents at 4 (attached as **Exhibit "B"**) and September 9, 2009 Omnibus Order at 2 (attached as **Exhibit "C"**).

12. Based upon the foregoing, this court cannot logically hold that the Requested inspection is not testimonial or communicative in nature, especially in light of the real, substantial and present threat of future criminal prosecution.

III. The Request Is Irrelevant, Harassing, Interposed As A Means To Humiliate And Embarrass Epstein And Is Not Reasonably Calculated To Lead To The Discovery Of Admissible Evidence

13. The Request and the law surrounding same should be taken seriously, and BBs attempt to argue same in a fashion to "pump" the media should be disregarded.

14. Rule 1.280(b), Florida Rules of Civil Procedure, provides in pertinent part, "[p]arties may obtain discovery regarding any matter, not privileged, **that is relevant to the subject matter** of the pending action, whether it relates to the claim or defense of

the party seeking discovery or the claim or defense of any other party....” (Emphasis added).

15. “Relevant evidence is evidence tending to prove or disprove a material fact.” See Fla. Stat. §90.401. In the instant case, there are no allegations in █ complaint that would be proven or disproven by evidence obtained from the Request/inspection, and the inspection will not lead to the discovery of admissible evidence. This is not a criminal case where the alleged perpetrator is sought to be identified. Quite the contrary. If █ allegations are accepted as true, she knows exactly who Epstein is, what he looked like etc. . . . Moreover, █ has failed to allege any allegations in her complaint or in her responses to interrogatories that she saw Epstein’s penis or that he penetrated her with his penis. Further, as stated above, her deposition has yet to occur in this matter and, as a result, her claims in the Request have yet to be challenged. The allegations in the Amended Complaint are as follows:

“ . . .Mr. Epstein came into a bathroom and shut the door behind him, told both girls to remove their clothes and undressed himself. Mr. Epstein then placed a small washcloth over his genitals and asked both girls to rub lotion on his naked body. . . . Mr. Epstein then began to masturbate while █ was massaging him. ¶14, Amended Complaint. **Exhibit “D”**.

16. Nowhere in the Amended Complaint or in her answers to interrogatories does █ allege that Epstein removed his towel or that she ever saw Epstein’s penis. In that regard, there is not a material fact in controversy pursuant to which the Request could lead to the discovery of relevant and admissible evidence.

17. █ cite to Harrell v. Hense, 2009 WL 409875 (C.D.Cal.) could not better support Epstein’s argument herein. Harrell involves a matter where the petitioner was

convicted of unlawfully possessing a controlled substance including, but not limited to, a black baggie containing crack cocaine allegedly tucked away in the foreskin of his uncircumcised penis. *Id.* at *2. In Harrell, photographs were placed into evidence by Defense Counsel to show that petitioner was allegedly circumcised in an effort to show the jury that it was impossible for petitioner to hide the crack cocaine in a penis that was circumcised. *Id.* Accordingly, in Harrell, there was a material question placed in front of the jury by defense counsel, *to wit*: whether the physiology of petitioner's penis allowed him to hide crack cocaine in his foreskin.² During the prosecutor's case-in-chief, a motion was made to require petitioner to submit to a physical examination to photograph petitioner's penis such that the prosecution could use its own photos to aid their case. Counsel for petitioner, as the court noted, did not object to the inspection and only asked to be present at the examination. In the instant matter, there are no allegations or quandaries alleged as to the shape of Epstein's genitalia. As stated above, to the extent such allegations were made and Epstein invoked his Fifth Amendment right thereto, █ would argue for an adverse inference – which halts the inquiry. *See supra.* Harrell provides an outline for this court, even though the case is clearly distinguishable, that any such inspection could only be had if Epstein places his genitalia in question and only right before or during trial.

18. In Boyle v. Buck, 858 So.2d 391 (Fla. 4th DCA 2003), the court ordered a Defendant to produce his vehicle involved in an accident resulting in a death. *Id.* The Court found that the Fifth Amendment against self-incrimination was not violated

² No similar allegations exist in the instant matter making Epstein's genitalia material.

because the vehicle itself did not amount to the production of testimonial or communicative evidence; however, the court noted that the Fifth Amendment privilege against self-incrimination exists primarily to assure an individual is not compelled to produce evidence which later may be used against him as an accused in a criminal action. Id. at 392. Here, as stated *supra*, producing Epstein for the inspection could later be used as a link in the chain of evidence used to convict him of a crime and/or could aid in the development of other incriminating evidence that can be used at trial. Id. at 292-293. This request goes to the heart of testimonial and communicative evidence, especially in light of the NPA. See supra.

19. Based upon the foregoing, an inspection of Epstein's genitalia would violate his constitutional right to privacy. See Fla. Const., Art I. §23. The constitutional right of privacy in the Florida Constitution is broader than the protection provided in the United States Constitution. See Berkeley v. Eisen, 699 So. 2d 789, 790 (Fla. 4th DCA 1997), citing Rasmussen v. South Fla. Blood Serv., Inc., 500 So. 2d 533, 536 (Fla. 1987). Orders compelling discovery constitute state action that may impinge on the constitutional right of privacy. See Berkeley, 699 So. 2d at 790. The court must balance the competing interests, privacy versus the need for discovery, that would be served by granting or denying discovery. Id. at 791.

20. The fact █ wants to photograph Epstein's genitalia amplifies the invasion of privacy. Again, the Fifth Amendment is implicated and, as well, the Fourth Amendment could be implicated here for the reasons set forth in Epstein's Objections To █ Request For Entry Upon Land, Motion For Protective Order And Incorporated

Memorandum Of Law previously filed with this court and incorporated herein by reference. **Exhibit "E"**. The physical violation of his person is the chief evil against which the Fourth Amendment is directed and a principal protection against unnecessary intrusions. See Welsh v. Wisconsin, 466 U.S. 740 (1984).

21. For the foregoing reasons, the Court should deny █'s Request and enter a protective order, pursuant to Fla. R. Civ. P. 1.280(c), prohibiting such discovery as it is harassing, humiliating, and not relevant or reasonably calculated to lead to the discovery of admissible evidence and it violates Epstein's constitutional right to privacy.

IV. Alternatively, If An Inspection Occurs, It Should Be Subject To Further Court Ruling Based Upon █'s Deposition Testimony, Only After █'s Deposition Has Occurred And Just Prior To Trial And Only After The Appropriate Motion Can Be Fully And Intelligently Briefed and Ruled Upon By This Court Based Upon █'s Deposition Testimony

22. If this court allows the inspection, it should: (a) be subject to further court ruling based upon █'s deposition testimony; (b) occur after █'s deposition has occurred and just prior to trial; (c) occur only after the appropriate motion can be fully and intelligently briefed and ruled upon by this court based upon █'s deposition testimony; and (d) the photograph should be strictly limited by confidentiality agreement and should, among other things, not be disclosed to any person other than BBs counsel and returned to Epstein after the conclusion of this litigation. Likewise, any expert permitted to view the photographs should be required to sign an assurance providing that he or she agrees to abide by the terms of a confidentiality order, and disclosure will occur only after good cause has been shown to the court.

23. Due to the substantial due process and privacy concerns articulated herein, the Court should further order that a violation of the confidentiality order be punishable by contempt of court. █ attorneys have not been shy about contacting the press.

24. If the Court permits an inspection, it should also take place shortly before trial, but only after █ has been deposed to avoid any attempt by █ to tailor her testimony to the information obtained from the inspection and only after a subsequent Motion has been filed detailing █ deposition testimony. An analogy can be made to cases involving impermissibly suggestive showups.³ See e.g. Neil v. Biggers, 409 U.S. 188 (1972). In Neil, the United States Supreme Court, addressing suggestive showups, noted that “the primary evil to be avoided is a very substantial likelihood of irreparable misidentification.” Id. at 198. (Internal quotations omitted). It went on to state that suggestive confrontations are disapproved because they increase the likelihood of misidentification, which would violate a defendant’s due process rights. Id.

25. Just like a victim’s propensity to misidentify a criminal suspect in a suggestive showup, there is a strong likelihood that █ will tailor her recollection and testimony to the photographs taken at the inspection. There would be no way to test whether her testimony was a result of independent recollection of the alleged events or from viewing the photographs. This would, of course, violate Epstein’s due process rights.

³ A “showup” is a pretrial identification procedure in which a suspect is confronted with a witness to or the victim of a crime. Unlike a lineup, a showup is a one-on-one confrontation. See Black’s Law Dictionary (8th ed. 2004).

26. On the other hand, █ will not be prejudiced by postponing the inspection until after her deposition and another hearing is had regarding this subject matter.

WHEREFORE, Defendant, JEFFREY EPSTEIN, respectfully requests the Court deny the Request and enter the appropriate protective order or, in the alternative, enter a protective order limiting the inspection as follows: (a) be subject to further court ruling based upon █ deposition testimony; (b) occur after █ deposition has occurred and just prior to trial; (c) occur after the appropriate motion can be fully and intelligently briefed and ruled upon by this court based upon █ deposition testimony; and (d) the photograph should be strictly limited by confidentiality agreement and should, among other things, not be disclosed to any person other than BBs counsel and returned to Epstein after the conclusion of this litigation.

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 9 day of December, 2009:

Theodore J. Leopold, Esq.
Spencer T. Kuvin, Esq.
Leopold-Kuvin, P.A.

█
█
Fax: █
Counsel for Plaintiff █.

Jack Goldberger, Esq.
Atterbury, Goldberger & Weiss, P.A.

█
█
Fax: █
Co-counsel for Defendant Jeffrey Epstein

**BURMAN, CRITTON, LUTTIER
& COLEMAN, LLP**



(561) 515-3148 Fax

By: _____

[Handwritten signature]
Robert D. Critton, Jr.
Florida Bar #224162
Michael J. Pike
Florida Bar #617296

(Counsel for Defendant Jeffrey Epstein)

9/3 7

IN THE CIRCUIT COURT OF THE
15TH JUDICIAL CIRCUIT IN AND
FOR PALM BEACH COUNTY,
FLORIDA

CASE NO:
502008CA037319XXXXMB AB

█

Plaintiff,

vs.

JEFFREY EPSTEIN,

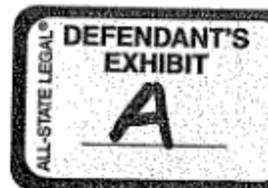
Defendant.

_____ /

MOTION FOR INSPECTION AND TO COMPEL DISCOVERY (PHOTOGRAPHS)

Plaintiff, █, by and through undersigned counsel, hereby files this Motion for Inspection and to Compel Discovery and requests this Court to order Defendant, JEFFREY EPSTEIN, to submit to have his genitalia photographed by an independent medical examiner; and as grounds therefore states as follows:

1. Relevant evidence is defined as any evidence tending to prove or disprove a material fact. Fla. Stat. § 90.401 (2009). If evidence is logically probative, it is relevant and admissible unless there is an independent reason for not allowing the jury to consider it. Lavallee v. State, 958 So.2d 509, (Fla. 4th DCA 2007) (citations omitted).
2. Count I of Plaintiff's Complaint charges Defendant with Sexual Battery.
3. Defendant has not admitted to any sexual contact with Plaintiff.



4. Unless Defendant admits Plaintiff observed his genitalia an inherent factual issue exists as to whether any sexual contact occurred. Whether Plaintiff can identify Defendant's genitalia at trial will become a crucial factual issue if Defendant argues the incident never occurred.
5. The shape of Defendant's genitalia is unique. In the Probable Cause Affidavit (Probable Cause Affidavit attached hereto as Exhibit "A"), Defendant's genitalia is described as "deformed," "oval shaped," and "egg-shaped."
6. Defendant's attorneys have refused to allow Defendant to answer questions regarding the shape of his penis. (Deposition of Jeffrey Epstein taken September 2, 2009, attached hereto as Exhibit "B").
7. The proposed photographs of Defendant's genitalia are non-testimonial in nature which means the Defendant cannot assert his Fifth Amendment Right against self-incrimination. Boyle v. Buck, 858 So.2d 391, 393 (Fla. 4th DCA 2003) ("The Fifth Amendment privilege does not shield every kind of incriminating evidence. Rather, it protects only testimonial or communicative evidence, not real or physical evidence which is not testimonial or communicative in nature.") (citations omitted).
8. Defendant may argue such photographs are embarrassing and harassing however Defendant should not now be able to clothe from inspection the same genitalia he exposed to then fifteen year old Plaintiff in order to avoid civil prosecution.
9. In Harrell v. Hense, 2009 WL 409875 (C.D.Cal. 2009), the court denied Defendant's Habeas Corpus petition and held that the court ordered physical examination of Defendant's penis was proper. The court stated the examination did not violate Defendant's Fourth Amendment rights as the examination was necessary for the jury to evaluate the facts of the case. Id. at 10. "In sum, the examination was ordered for reasonable purpose in a reasonable

manner and thus was neither compulsory self-incrimination nor an unlawful search and seizure." Id. (citations omitted).

WHEREFORE, Plaintiff respectfully requests this Court order Defendant, JEFFREY EPSTEIN, submit to have his genitalia photographed by an independent medical examiner.

HEREBY CERTIFY that a true and correct copy of the foregoing was furnished by U. S. Mail, postage prepaid, this 3 day of Sept., 2009 to Jack A. Goldberger, Esq., 250 Australian Avenue, Suite 1400, West Palm Beach, FL 334101; Bruce E. Reinhart, Esq., [REDACTED]
[REDACTED] Robert D. Critton, Jr., Michael J. Pike,
[REDACTED]

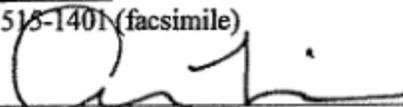
LEOPOLD-KUVIN, P.A.

[REDACTED]

[REDACTED]

(561) 513-1401 (facsimile)

By: _____



SPENCER KUVIN, Esq.
Florida Bar No.: 0089737
ADAM J. LANGINO, Esq.
Florida Bar No.: 0031368

**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,

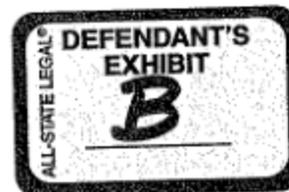
Defendant.

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.: 08-80994-CIV-MARRA/JOHNSON

JANE DOE NO. 7,

Plaintiff,

vs.

JEFFREY EPSTEIN,

Defendant.

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

C.M.A.,

Plaintiff,

vs.

JEFFREY EPSTEIN,

Defendant.

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

JANE DOE,

Plaintiff,

vs.

JEFFREY EPSTEIN et al,

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

Defendants.
_____ /

DOE II,

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

Plaintiff,

vs.

JEFFREY EPSTEIN et al,

Defendants.
_____ /

JANE DOE NO. 101,

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

Plaintiff,

vs.

JEFFREY EPSTEIN,

Defendant.
_____ /

JANE DOE NO. 102

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

Plaintiff,

vs.

JEFFREY EPSTEIN,

Defendant.
_____ /

ORDER

THIS CAUSE is before the Court on Plaintiff's Motion to Compel Answers to Interrogatories and Production of Documents (D.E. #57). For the following reasons said

Motion is granted in part and denied in part as follows.

In this case, which has been consolidated for purposes of discovery, Plaintiffs are former under-age girls who allege they were sexually assaulted by Defendant, Jeffrey Epstein ("Epstein"), at his Palm Beach mansion home. The scheme is alleged to have taken place over the course of several years in or around 2004-2005, when the girls in question were approximately 16 years of age. As part of this scheme, Epstein, with the help of his assistant [REDACTED] allegedly lured economically disadvantaged minor girls to his homes in Palm beach, New York and St. Thomas, with the promise of money in exchange for a massage. Epstein purportedly transformed the massage into a sexual assault. The three-count Complaint alleges sexual assault and battery (Count I), intentional infliction of emotional distress (Count II), and, coercion and enticement to sexual activity in violation of 18 U.S.C. §2422 (Count III).

In 2008, Epstein entered into a Non-Prosecution Agreement with the United States Attorney General's Office for the Federal Southern District of Florida and the State Attorney's Office for Palm Beach County. Under the terms of the Non-Prosecution Agreement, any criminal prosecution against Epstein is deferred as long as he abides by the certain terms and conditions contained therein. If at any time the United States Attorney's Office has reason to believe Epstein is in breach of the Agreement, it need only provide Epstein's counsel with notice of the breach and then move forward with Epstein's prosecution. Accordingly, the undersigned would agree with Epstein's statement at page 4 of its Response, that the fact there exists a Non-Prosecution Agreement does not mean that Epstein is free from future criminal prosecution, and that in fact, "the threat of prosecution is real, substantial, and present." *Id.*

By this Motion, Plaintiff seeks to compel answers to certain interrogatories and requests for production that were propounded December 9, 2008. Defendant has responded by asserting several objections, the primary one of which is an assertion of his Fifth Amendment privilege.

The Fifth Amendment serves as a guarantee against testimonial compulsion and provides, in relevant part, that “[n]o person...shall be compelled in any Criminal Case to be a witness against himself.” Id. In practice, the Fifth Amendment’s privilege against self-incrimination “permits a person not to answer official questions put to him in any other proceeding, civil or criminal, formal or informal, where the answers might incriminate him in future criminal proceedings.” Edwin v. Price, 778 F.2d 668, 669 (11th Cir. 1985)(citing Lefkowitz v. Turley, 414 U.S. 70, 77 (1973)). The privilege is accorded “liberal construction in favor of the right it was intended to secure,” Hoffman v. United States, 341 U.S. 479, 486 (1951), and extends not only to answers that would in themselves support a criminal conviction, but extends also to those answers which would furnish a link in the chain of evidence needed to prosecute the claimant for a crime. Id.; Blau v. United States, 340 U.S. 159 (1950). Thus, information is protected by the privilege not only if it would support a criminal conviction, but also in those instances where “the responses would merely ‘provide a lead or clue’ to evidence having a tendency to incriminate.” United States v. Neff, 615 F.2d 1235, 1239 (9th Cir.), cert. denied, 447 U.S. 925 (1980).

The Fifth Amendment’s privilege against self-incrimination comes into play only in those instances where the witness has “reasonable cause to apprehend danger from a direct answer.” Hoffman, 341 U.S. at 486 (citing Mason v. United States, 244 U.S. 362, 365 (1917)). “The claimant must be ‘confronted by substantial and ‘real,’ and not merely trifling

or imaginary, hazards of incrimination." United States v. Apfelbaum, 445 U.S. 115, 128 (1980).

When the Fifth Amendment privilege is raised as a bar to discovery, a blanket refusal to answer questions or to produce documents is improper. Anglada v. Sprague, 822 F.2d 1035, 1037 (11th Cir. 1987). Instead, the privilege must be asserted in response to a particular question, and in each instance the burden is on the claimant to justify invocation of the privilege. Id. Once a particularized showing has been made, "[i]t is for the court to decide whether a witness' silence is justified and to require him to answer if it clearly appears to the court that the witness asserting the privilege is mistaken as to its validity." In re Morganroth, 718 F.2d 161, 166-67 (6th Cir. 1983). In making this determination the judge is instructed to view the facts and evidence presented on a case-by-case basis, and "must be governed as much by his perception of the peculiarities of the case, as by the facts actually in evidence." Hoffman, 341 U.S. at 487.

The law is well established that the Fifth Amendment privilege may not apply to specific documents "even though they contain incriminating assertions of fact or belief, because the creation of those documents was not 'compelled' within the meaning of the privilege." United States v. Hubbell, 530 U.S. 27, 35-36 (2000). However, in certain instances, "the act of production' itself may implicitly communicate 'statements of fact.'" Id. For this reason the Fifth Amendment privilege also encompasses the circumstance where the act of producing documents in response to a subpoena or production request has a compelled testimonial aspect Id. Thus, in those instances where the existence and/or location of the requested documents are unknown, or where production would "implicitly authenticate" the requested documents, the act of producing responsive

documents is considered testimonial and is protected by the Fifth Amendment. In re Grand Jury Subpoena, 1 F.3d 87, 93 (2d Cir. 1993); see also Fisher v. United States, 425 U.S. 391, 410 (1976)(issue expressed as whether compliance with a document request or subpoena "tacitly conceded" the item's authenticity, existence or possession by the defendant).

The Court begins with an analysis of the Fifth Amendment privilege as applied to each request. In the event the Court determines that a certain request does not infringe upon Epstein's Fifth Amendment privilege, Epstein's additional objections to that request shall be addressed. Where appropriate, the Court looks to Epstein's Response Memorandum for more particularized objections, rather than relying solely on Epstein's objections as initially stated, which in some cases were less specific in nature. The Court also notes Plaintiff's concession, stated at pages 3 and 5 of her Motion, that the act of producing items in response to Production Request Nos. 9, 12-13 and responding to Interrogatory No. 9, may implicate the Fifth Amendment. Finally, the Court approves Epstein's decision not to provide a detailed privileged log, in that it is reasonable under the circumstances to believe that in compelling production of same, the Court would in essence be compelling testimony to which Epstein's constitutional protections might apply. As such, the Court agrees with Epstein that it makes judicial sense to decide the constitutional issues first, before deciding the additional discovery request objections.

INTERROGATORIES

Epstein's assertion of the Fifth Amendment as it relates to Interrogatories 3, 4, 5, 6, 13, 14, 15, 16 and 17 is sustained and Plaintiff's Motion in this regard is denied. Interrogatories 3-6 ask Epstein to identify anyone who gave or were asked to give him

massages. Epstein argues, and this Court agrees, that any answer to these questions involve compelled statements that could reasonably furnish a link in the chain of evidence needed to prosecute Epstein in future criminal proceedings or even support a criminal conviction. Interrogatory No. 15 seeks information relating to alleged sexual abuse or misconduct on a minor. On its face, this interrogatory seeks incriminating evidence which Epstein is entitled to protect by asserting his Fifth Amendment privilege against self incrimination. Interrogatory No. 16 is a contention interrogatory seeking the facts upon which Epstein relies to support each of his pleading allegation denials and for each affirmative defense. As Epstein correctly observes, forcing him to answer this interrogatory unconstitutionally places him in the position of being compelled to testify as to his version of the facts, and, in asserting affirmative defenses, being compelled to admit to Plaintiff's version of the facts.

Interrogatories 13, 14 and 17 ask Epstein to identify any persons or witnesses who have knowledge of the events in question, or who are in possession or control of any photos, videos, written statements, etc. pertaining to the events in question. Clearly these interrogatories, all of which relate to claims of sexual abuse and exploitation of a minor, implicate the Fifth Amendment, in that by requiring Epstein to list such persons or witnesses, Epstein is being forced to incriminate himself in the commission of crimes.

Epstein's assertion of the Fifth Amendment as it relates to Interrogatories 1, 2, 9 and 12, is likewise sustained and Plaintiff's Motion in this regard denied. While these interrogatories ask for general, identification-type information, which on their face may not appear to infringe upon or otherwise implicate Epstein's rights under the Fifth Amendment, based on the particularized showing made by Epstein in his Response Memorandum, the

facts alleged in the Complaints, and the undersigned's knowledge of the cases, it is clear they involve compelled statements that would furnish a link in the chain of evidence needed to convict him of a crime, allowing Epstein to assert his Fifth Amendment privilege.

Interrogatory No. 1 asks Epstein to identify all employees who performed work or services inside his Palm Beach residence and Interrogatory No. 2 asks Epstein to identify all employees not identified in Interrogatory No. 1 who at any time came to Defendant's Palm Beach residence. Interrogatories 9 and 12 are similar in nature requesting information regarding the identity of persons providing transport services (Interrogatory 9), and a list of Epstein's employee's telephone numbers (Interrogatory 12).

Epstein raises the same general objections to each of these interrogatories, referring to the allegations in the Complaints of sexual abuse, exploitation and battery, along with the alleged scheme of recruiting girls to come to his Palm Beach mansion to give him "massages," and then states that requiring him to identify his employees, his drivers, and his employee's telephone numbers, "would be a link in the chain of evidence needed to convict him of a crime." Then, in his Response Brief, Epstein goes further and makes a particularized showing for each of the subject interrogatories identified above explaining how answering these interrogatories present a real and substantial danger of self incrimination. See Epstein's Resp. Brief, pp. 18-20.

As noted previously, the Fifth Amendment privilege against self incrimination is accorded "liberal construction," Hoffman, 341 U.S. at 486, and extends not only to answers that would in themselves support a criminal conviction, but extends also to those answers which would furnish a link in the chain of evidence needed to prosecute the claimant for a crime. Id. Thus to be afforded protection, the answer need not necessarily be enough

to support a criminal conviction; it is enough if the response merely provides a lead or clue to evidence having a tendency to incriminate. Neff, 615 F.2d at 1239. In asserting his Fifth Amendment privilege, Epstein expresses a concern that employees who either worked at his Palm Beach residence or visited his Palm Beach residence during the relevant time period, or drivers who drove himself or others to or from his Palm Beach residence would be privy to evidence that would implicate Epstein in a crime. Given the allegations raised in the Complaints and the elements required to convict Epstein of a crime, and considering the background facts underlying the case, these concerns are reasonable, real and not unjustified. As such, the subject requests, which essentially ask Epstein to identify potential witnesses against him, are subject to Epstein's assertion of his Fifth Amendment privilege against self incrimination.

In sustaining Epstein's Fifth Amendment privilege, the Court has considered the facts alleged in the Complaints, the elements needed to convict Epstein of a crime, the particularized showing made in Epstein's Response Brief, and drawn upon the Court's knowledge of the cases at issue. On this basis the Court finds the privilege raised as to these interrogatories valid, and asserted by Epstein only with reference to "genuinely threatening questions." United States v. Goodwin, 625 F.2d 693, 701 (5th Cir. 1980). The danger Epstein faces by being forced to testify in this instance is "substantial and real, and not merely trifling or imaginary" as required. Apfelbaum, 445 U.S. 128. Accordingly, finding the above-mentioned interrogatories involve compelled statements that would furnish a link in the chain of evidence needed to convict Epstein of a crime, the Court finds Epstein's Fifth Amendment privilege claim validly asserted.

When one considers the nature of the allegations, to wit, a scheme and plan of

sexual misconduct carried out at Epstein's various residences, and that at least one of Epstein's employees, ██████████, is alleged to have aided Epstein in his alleged sexual exploitation, then it is entirely reasonable for Epstein to assert that forcing him to testify as to anyone who came or went to his Palm Beach mansion or was employed at his Palm Beach mansion (Interrogatories 1-2), the identity of persons providing transport services (Interrogatory No. 9), and his employee's telephone numbers (Interrogatory 12), may provide a lead or clue to evidence tending to incriminate him. Not only would such compelled testimony self-incriminate him on the elements required to establish a criminal violation, and thus serve as a link in the chain of evidence needed to prosecute Epstein for a crime, but in some cases serve to incriminate him by asking Epstein to identify potential witnesses against him. Accordingly, Epstein's Fifth Amendment privilege as it relates to Interrogatories 1, 2, 9 and 12 is sustained and Plaintiff's Motion in this regard is rejected.

The same objections raised above with respect to Interrogatories 1, 2, 9 and 12 have been raised by Epstein to justify his refusal to answer Interrogatories 7 (dates of Florida travel), 8 (identification of health care providers), and 11 (identification of Epstein's telephone numbers). These Interrogatories ask for general, identification-type information, which neither on their face nor by implication implicate Epstein's rights under the Fifth Amendment. In this regard, the Court is left with only Epstein's blanket assertion of the privilege in which he claims that requiring him to identify his health care providers, his various telephone numbers and his dates of Florida travel, "would be a link in the chain of evidence needed to convict him of a crime." See Epstein's Resp. Brief, pp. 18-20. Unfortunately for Epstein, this objection is so general and sweeping in nature it amounts to a blanket assertion of the privilege. In these circumstances, where a blanket assertion

of the privilege is asserted, the Court is required to make a "particularized inquiry," and sustain only those privileges asserted as to "genuinely threatening questions." United States v. Goodwin, 625 F.2d 693, 701 (5th Cir. 1980).

Here, Epstein's objections fall well short of the showing required of demonstrating that requiring him to answer these interrogatories would realistically and necessarily furnish a link in the chain of evidence needed to prove a crime against him. Discovery requests that seek background information on events and experiences of the witness for which he cannot realistically or genuinely be expected to be charged with a crime are not subject to Fifth Amendment protection. See Krause v. Rhodes, 390 F.Supp. 1070, 1071-72 (N.D. Ohio 1974). In summary, Epstein has failed to sustain his burden of making a particularized showing to support his claim that forcing him merely to identify his health care providers, his dates of travel and his telephone numbers, would present a substantial and real threat of criminal prosecution.

As for Epstein's non-privileged based objections, such as relevance, over breadth, over burdensomeness, and alleged HIPAA protection, said objections are also rejected. Rule 33 of the Federal Rules of Civil Procedure, allows any party to serve on any other party written interrogatories concerning matters within the scope of Federal Rule Civil Procedure 26(b). The scope of discovery under Rule 26(b) is broad: "[p]arties may obtain discovery regarding any matter, not privileged, which is relevant to the claim or defense of any party involved in the pending action." Id. Relevant information need not be admissible at trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence." Id.; see also Hickman

v. Taylor, 329 U.S. 495, 507-508 (1947); Farnsworth v. Proctor and Gamble Co., 758 F.2d 1545, 1547 (11th Cir. 1985)(the Federal Rules of Civil Procedure "strongly favor full discovery whenever possible"); Canal Authority v. Froehke, 81 F.R.D. 609, 611 (M.D. Fla. 1979).

Thus, under Rule 26, relevancy is "construed broadly to encompass any matter that bears on, or that reasonably could lead to another matter that could bear on any issue that is or may be in the case." Oppenheimer Fund, Inc. v. Sanders, 437 U.S. 340, 352 (1978). Discovery is not limited to the issues raised by the pleadings because "discovery itself is designed to help define and clarify the issues." Id. at 352. In short, information can be relevant and therefore discoverable, even if not admissible at trial, so long as the information is reasonably calculated to lead to the discovery of admissible evidence. Dunbar v. United States, 502 F.2d 206 (5th Cir. 1974).

Under Fed. R. Civ. P., 26(b)(1) a court may limit discovery of relevant material if it determines that the discovery sought is unreasonably cumulative or duplicative, or obtainable from some other source that is more convenient, less burdensome, or less expensive, or the burden or expense of the proposed discovery outweighs the likely benefit. Id. The party resisting discovery has a heavy burden of showing why the requested discovery should not be permitted. Rossbach v. Rundle, 128 F.Supp.2d 1348, 1354 (S.D. Fla. 2000) ("The onus is on the party resisting discovery to demonstrate specifically how the objected-to information is unnecessary,

unreasonable or otherwise unduly burdensome.”); Dunkin Donuts, Inc. v. Mary’s Donuts, Inc., 2001 WL 34079319 (S.D. Fla. 2001)(“the burden of showing that the requested information is not relevant to the issues in the case is on the party resisting discovery”)(citation omitted); Gober v. City of Leesberg, 197 F.R.D. 519, 521 (M.D. Fla. 2000)(“The party resisting production of information bears the burden of establishing lack of relevancy or undue burden in supplying the requested information”).

To meet this burden, the party resisting discovery must demonstrate specifically how the objected-to request is unreasonable or otherwise unduly burdensome. See Fed. R. Civ. P. 33(b)(4); Panola Land Buyers Ass’n v. Shuman, 762 F.2d 1550, 1559 (11th Cir. 1985); Roszbach, 128 F.Supp.2d at 1353. Thus, to even merit consideration, “an objection must show specifically how a discovery request is overly broad, burdensome or oppressive, by submitting evidence or offering evidence which reveals the nature of the burden.” Coker v. Duke & Co., 1777 F.R.D. 682, 686 (M.D. Ala. 1998). Once the resisting party meets its burden, the burden shifts to the moving party to show the information is relevant and necessary. Gober, 197 F.R.D. at 521; see also Hunter’s Ridge Golf Co. Inc. v. Georgia-Pacific Corp., 233 F.R.D. 678, 680 (M.D. Fla. 2006).

Here, the information requested concerns Epstein's dates of travel, health care provider identification, and list of phone numbers. This information is relevant in that it may lead to evidence to support Plaintiff's claims that Epstein lured her to

his mansion for the purpose of sexual exploitation. Substantively, the interrogatories are narrowly tailored to discover only information that is directly relevant to Plaintiff's claims and/or Epstein's defenses. Epstein's HIPAA objections are unfounded as the request seeks only the **identification** of Epstein's health care providers.¹

Finally, the requested ten-year time frame is not overly broad considering the allegation that Epstein has a psychosexual condition, which, if true, could very well have existed most, if not all, of his adult life. The Court agrees with Epstein, however, that Plaintiff's allegation of child abuse, does not alone provide Plaintiff with carte blanche access to a list of ALL of Defendant's medical providers. Instead, the undersigned limits the interrogatory to a request for "identification, by name, title and address and/or telephone number, of all of Epstein's psychologists, psychiatrists, therapists, or mental health counselors for the last ten years." Accordingly, except as mentioned above with respect to health care professionals, the Court finds Epstein's objections to Interrogatories 7, 8 and 12 unfounded and orders Epstein to provide responses to same in accordance with the afore-stated terms, within ten (10) days from the date hereof.

PRODUCTION REQUESTS

As noted previously, the Fifth Amendment privilege may not apply to specific

¹ In addressing Interrogatory 8, both parties refer to the need for the Court to hold an *in camera* inspection of the documents to determine, as to each document, whether Fla. Stat. §39.204 is applicable. The request at issue, however, is an INTERROGATORY request, not a document request, and therefore these concerns are inapplicable.

documents “even though they contain incriminating assertions of fact or belief, because the creation of those documents was not ‘compelled’ within the meaning of the privilege.” Hubbell, 530 U.S. at 35-36. Accordingly, a party cannot avoid discovery merely because demanded documents contain incriminating evidence, “whether written by others or voluntarily prepared by himself.” Id. In certain instances, however, “‘the act of production’ itself may implicitly communicate ‘statements of fact.’” Id. For this reason the Fifth Amendment privilege also encompasses the circumstance where the act of producing documents in response to a subpoena or production request has a compelled testimonial aspect id. Thus, in those instances where the existence and/or location of the requested documents are unknown, or where production would “implicitly authenticate” the requested documents, the act of producing responsive documents is considered testimonial and is protected by the Fifth Amendment. In re Grand Jury Subpoena, 1 F.3d 93.

In response to Plaintiff’s Requests for Production, Epstein has asserted an identical “blanket” objection to each of the 24 requests, stating essentially that while he initially intended to produce all responsive relevant documents, he has been advised by his attorneys to assert his “federal constitutional rights under the fifth, Sixth and Fourteenth Amendments” and refuse to produce them. In his Response Brief Epstein went further and explained that as to each of the production requests at issue, “the act of production itself involves a testimonial compulsion” in that, “[i]n responding to each request, Epstein would be compelled to admit that such documents existed, admit that the documents were in his possession or control, and were authentic. In other words, the very act of production of the category of documents requested would implicitly communicate “statements of fact.” Epstein’s Resp. Brief, p.22. According to Epstein, the “act of production might not only

provide evidence to support a conviction, but also a link in the chain of evidence for prosecution. Such compulsion to produce is the same as being compelled to testify." *Id.*

The documents requested fall into several different categories consisting of agreements with the U.S. Attorney and State Attorney, and documents exchanged between the Defendant and the U.S. Attorney (Requests 1-4), telephone records (Requests 5-6), videos and photos of Epstein's Palm Beach residence (Request 7), documents relating to Plaintiff Jane Doe (Request 8), air travel records (Request 10), documents relating to model agencies (Request 11), correspondence with other witnesses (Request 14-17, 19), social networking documents (Request 18), gifts to minor females (Request 20), personal calendars and diaries (Requests 21-22), and, prescription medicines (Request 23).²

Defendant's Motion as it relates to Production Requests 1, 2, 3, 4, 6, 8, 14, 15, 16, 17 and 20 is denied. The very act of producing documents in response to these requests is testimonial in nature, in that by production, Epstein would be implicitly communicating "statements of fact," to which the Fifth Amendment privilege may be validly asserted. Hubbell, 530 U.S. at 35-36. Not only do the subject requests implicitly involve "statements of fact," given the nature of the allegations against Epstein, they could also serve as links in the chain of evidence needed for prosecution. As such, Epstein's Fifth Amendment privilege assertion as it relates to these requests is sustained.

² On page 5, footnote 6 of Plaintiff's Reply Brief, Plaintiff concedes that the act of producing items in response to Request 9, concerning witness statements, and Requests 12-13, concerning photographs or images of females, may implicate the Fifth Amendment. As such, Epstein's assertion of his Fifth Amendment privilege as it relates to these requests stands and Epstein need not produce documents responsive to Requests 9, 12-13..

In sustaining Epstein's Fifth Amendment privilege, the Court has considered the particular requests at issue, the facts alleged in the Complaints, the elements needed to convict Epstein of a crime, and has drawn upon the Court's knowledge concerning the cases at issue. On this basis, the Court finds the privilege raised as to these requests valid, and asserted by Epstein only with reference to "genuinely threatening questions." Goodwin, 625 F.2d at 701. Accordingly, finding the above-mentioned requests involve compelled statements that could furnish a link in the chain of evidence needed to convict Epstein of a crime, the Court finds Epstein's Fifth Amendment privilege claim as applied to these requests validly asserted.

The Court notes that in making this determination it is cognizant that except in those instances where it is apparent from the face of the subject requests that the act of producing responsive items would be protected under the Fifth Amendment, it is the Defendant's burden to demonstrate that the act of producing any particular responsive documents would entail testimonial self-incrimination. U.S. v. Wujkowski, 929 F.2d 981, 984 (4th Cir. 1991). In the instant case, it is evident from the requests themselves, the allegations in the various Complaints, and the facts and circumstances surrounding these cases, that to demand from Epstein a more particularized showing of danger, would require Epstein "to surrender the very protection which the privilege is designed to guarantee." Hoffman, 341 U.S. at 479. As such, no more particularized showing than that offered by Epstein in his Response Brief is necessary.

Plaintiff's Motion as it relates to Request 7 and 23 is granted. Request 7 seeks all surveillance videos or photographs of the Palm Beach residence. Request 23 seeks all documents referring or relating to Epstein's purchase or consumption of prescription

medication. It is not evident from the face of these requests, even given the allegations contained in the Complaints and the undersigned's knowledge of the facts and circumstances surrounding the action, how production of these responsive documents can in any way be seen to implicitly communicate "statements of fact." Nor is it evident from the face of these requests how production of responsive documents may "implicitly authenticate" items that are not themselves incriminating. It is therefore incumbent on Epstein to make a particularized showing, demonstrating how the act of producing responses to these requests would entail testimonial incrimination. Wujkowski, 929 F.2d at 984 (4th Cir. 1991). Epstein has failed to sustain his burden in this regard. Accordingly, Epstein's assertion of his Fifth Amendment privilege against self-incrimination in response to Requests 7 and 23 is denied, and Plaintiff's Motion as it relates to these requests is granted. Defendant has ten (10) days from the date hereof in which to produce documents responsive to these requests.

Plaintiff's Motion as it relates to requests for air travel documents (Request 10), model agency documents (Request 11), social networking site documents and photos (Request 18), witness statements (Request 19), and personal calendars or schedules (Request 21), is granted in part and denied in part. It is not evident from the face of these requests, even given the allegations contained in the Complaints and the undersigned's knowledge of the facts and circumstances surrounding the action, how production of responsive documents can in any way be seen to implicitly communicate "statements of fact." Nor is it evident from the face of the requests how production of responsive documents may "implicitly authenticate" items that are not themselves incriminating. It is therefore incumbent on Epstein to make a particularized showing, demonstrating how the

act of producing responses to these requests would entail testimonial incrimination. Wujkowski, 929 F.2d at 984 (4th Cir. 1991). Epstein has failed to sustain his burden in this regard.

Nonetheless, because the undersigned can imagine a scenario where production of documents responsive to these requests might constitute testimonial self incrimination, the Court defers ruling on the issue until such time as Epstein supplements his Response Brief by making a particularized showing, by *in camera* submission or otherwise, demonstrating how the Fifth Amendment may validly be asserted in response to these requests. Epstein shall have fifteen (days) from the date hereof in which to accomplish this task. Epstein has fifteen (15) days from the date hereof in which to produce documents responsive to any requests he elects not to address in the forthcoming supplementation.

Plaintiff's Motion as it relates to Request 5, seeking "all telephone records and other documents reflecting telephone calls made by or to Defendant", is denied as overly-broad and unduly burdensome. Plaintiff has failed to satisfactorily explain the relevance of this information to this litigation. Given the tremendous burden of producing the requested information, coupled with its tenuous connection to the issues in this case, the Court declines to compel a response to this request. See, e.g., World Triathlon Corp. v. SRS Sports Centre SDN, BHD, Case No. 8:04-cv-1594-T-24TBM, 2005 U.S. Dist. LEXIS 15412, at *2 (M.D. Fla. July 29, 2005)("the court may limit discovery upon the determination that the discovery sought is unreasonably burdensome or expensive or the expense of the proposed discovery outweighs its likely benefit, taking into account the needs of the case, the amount in controversy, the parties' resources, and the importance of the proposed discovery in resolving issues."); Priest v. Rotary, 98 F.R.D. 755, 761 (N.D. Cal.

1983)(“When a discovery request ‘[a]pproaches the outer bounds of relevance and the information requested may only marginally enhance the objectives of providing information to the parties or narrowing the issues, the Court must then weigh that request with the hardship to the party from whom the discovery is sought.”)(quoting Carlson Cos., Inc. v. Sperry & Hutchinson Co., 374 F.Supp. 1080, 1088 (D.Minn. 1974)); 10 Federal Procedure, Lawyer’s Edition § 26:70 (1994 & Supp. 2005)(“the district courts should not neglect their power to restrict discovery where justice requires protection for a party ... from undue burden or expense.”).

Finally, to the extent Epstein asks the Court to forbid the drawing of an adverse inference against Epstein for his failure to respond to discovery, said request is denied at this time, without prejudice and with leave to renew at a later date, as the request at this early juncture of the proceedings is premature.

In accordance with the above and foregoing, it is hereby

ORDERED AND ADJUDGED that Plaintiff’s Motion to Compel Answers to Interrogatories and Production of Documents (D.E. #57) is **GRANTED IN PART AND DENIED IN PART** in accordance with the terms of the within Order. In accordance herewith, Plaintiff’s Motion as it relates to Interrogatories 1, 2, 3, 4, 5, 6, 9, 12, 13, 14, 15, 16 and 17 and Production Requests 1, 2, 3, 4, 5, 6, 8, 14, 15, 16, 17, and 20 is denied, and Plaintiff’s Motion as it relates to Interrogatories 7, 8 and 11, and Production Requests 17 and 23 is granted. A ruling on Plaintiff’s Motion as it relates to Production Requests 10, 11, 18, 19, and 21 is deferred until Epstein files his Supplementary Response Brief, due fifteen (15) days from the date hereof, in which Epstein is required to make a particularized

showing, by *in camera* submission or otherwise, demonstrating how the Fifth Amendment may validly be asserted in response to these requests. Any of the above-mentioned requests (Requests 10, 11, 18, 19 and 21) not addressed in the forthcoming supplement are deemed by the Court to be outside a valid claim of Fifth Amendment privilege and must be responded to within fifteen (15) days from the date hereof.

DONE AND ORDERED this August 4, 2009, in Chambers, at West Palm Beach, Florida.



LINNEA R. JOHNSON
UNITED STATES MAGISTRATE JUDGE

CC: The Honorable Kenneth A. Marra
All Counsel of Record

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 08-CIV-80119-MARRA/JOHNSON

JANE DOE NO. 2,

Plaintiff,

vs.

JEFFREY EPSTEIN,

Defendant.

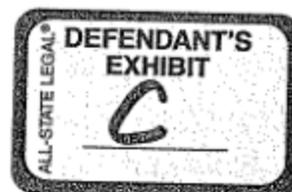
Related cases:

08-80232, 08-80380, 08-80381, 08-80994,
08-80993, 08-80811, 08-80893, 09-80469,
09-80591, 09-80656, 09-80802, 09-81092

OMNIBUS ORDER

THIS CAUSE is before the Court on Defendant's Motion for Reconsideration and/or Request for Rule 4 Review and Appeal of Portions of the Magistrate's Order (D.E. #282) and Defendant's Supplementary Brief pursuant to Magistrate's Order Requesting a More Particularized Showing Re: Fifth Amendment (D.E. #283).

In this case, which has been consolidated for purposes of discovery, Plaintiffs are former under-age girls who allege they were sexually assaulted by Defendant, Jeffrey Epstein ("Epstein"), at his Palm Beach mansion home. The scheme is alleged to have



taken place over the course of several years in or around 2004-2005, when the girls in question were approximately 16 years of age. As part of this scheme, Epstein, with the help of his assistant [REDACTED], allegedly lured economically disadvantaged minor girls to his homes in Palm beach, New York and St. Thomas, with the promise of money in exchange for a massage. Epstein purportedly transformed the massage into a sexual assault. The three-count Complaint alleges sexual assault and battery (Count I), intentional infliction of emotional distress (Count II), and, coercion and enticement to sexual activity in violation of 18 U.S.C. §2422 (Count III).

In 2008, Epstein entered into a Non-Prosecution Agreement with the United States Attorney General's Office for the Federal Southern District of Florida and the State Attorney's Office for Palm Beach County. Under the terms of the Non-Prosecution Agreement, any criminal prosecution against Epstein is deferred as long as he abides by the certain terms and conditions contained therein. If at any time the United States Attorney's Office has reason to believe Epstein is in breach of the Agreement, it need only provide Epstein's counsel with notice of the breach and then move forward with Epstein's prosecution. Accordingly, the undersigned would agree with Epstein's statement at page 4 of its Response, that the fact there exists a Non-Prosecution Agreement does not mean that Epstein is free from future criminal prosecution, and that in fact, "the threat of prosecution is real, substantial, and present." Id.

On August 4, 2009, the undersigned entered an Order on Plaintiff's Motion to Compel as to certain requests to which Defendant Epstein was asserting a Fifth Amendment privilege. By the two motions referred to above Epstein is seeking reconsideration of a portion of the Order as it relates to Interrogatory numbers 7 and 11

(D.E. #282) and pursuant to the Court's directive has submitted a more particularized showing as to why Epstein's Fifth Amendment privilege as to Request for Production Numbers 10, 11, 19 and 21 should be sustained (D.E. #283).

The Fifth Amendment serves as a guarantee against testimonial compulsion and provides, in relevant part, that "[n]o person...shall be compelled in any Criminal Case to be a witness against himself." *Id.* In practice, the Fifth Amendment's privilege against self-incrimination "permits a person not to answer official questions put to him in any other proceeding, civil or criminal, formal or informal, where the answers might incriminate him in future criminal proceedings." *Edwin v. Price*, 778 F.2d 668, 669 (11th Cir. 1985)(citing *Lefkowitz v. Turley*, 414 U.S. 70, 77 (1973)). The privilege is accorded "liberal construction in favor of the right it was intended to secure," *Hoffman v. United States*, 341 U.S. 479, 486 (1951), and extends not only to answers that would in themselves support a criminal conviction, but extends also to those answers which would furnish a link in the chain of evidence needed to prosecute the claimant for a crime. *Id.*; *Blau v. United States*, 340 U.S. 159 (1950). Thus, information is protected by the privilege not only if it would support a criminal conviction, but also in those instances where "the responses would merely 'provide a lead or clue' to evidence having a tendency to incriminate." *United States v. Neff*, 615 F.2d 1235, 1239 (9th Cir.), *cert. denied*, 447 U.S. 925 (1980).

The Fifth Amendment's privilege against self-incrimination comes into play only in those instances where the witness has "reasonable cause to apprehend danger from a direct answer." *Hoffman*, 341 U.S. at 486 (citing *Mason v. United States*, 244 U.S. 362, 365 (1917)). "The claimant must be 'confronted by substantial and 'real,' and not merely trifling or imaginary, hazards of incrimination." *United States v. Apfelbaum*, 445 U.S. 115, 128

(1980).

When applied to documentary production, the law is well established that the Fifth Amendment privilege may not apply to specific documents "even though they contain incriminating assertions of fact or belief, because the creation of those documents was not 'compelled' within the meaning of the privilege." United States v. Hubbell, 530 U.S. 27, 35-36 (2000). However, in certain instances, "'the act of production' itself may implicitly communicate 'statements of fact.'" Id. For this reason the Fifth Amendment privilege also encompasses the circumstance where the act of producing documents in response to a subpoena or production request has a compelled testimonial aspect Id. Thus, in those instances where the existence and/or location of the requested documents are unknown, or where production would "implicitly authenticate" the requested documents, the act of producing responsive documents is considered testimonial and is protected by the Fifth Amendment. In re Grand Jury Subpoena, 1 F.3d 87, 93 (2d Cir. 1993); see also Fisher v. United States, 425 U.S. 391, 410 (1976)(issue expressed as whether compliance with a document request or subpoena "tacitly conceded" the item's authenticity, existence or possession by the defendant).

MOTION FOR RECONSIDERATION AND/OR APPEAL (D.E. #282)

Interrogatory Number 7 requests all time periods during which Epstein was present in the State of Florida, including for each the date he arrived and the date he departed. Interrogatory Number 11 requests all telephone numbers used by Epstein, including cellular phones and land lines in any of his residences, by stating the complete phone number and name of the provider. In the August 4, 2009 Order the undersigned rejected Epstein's assertion of the Fifth Amendment privilege as applied to these requests finding

the objection "so general and sweeping in nature" that they "amount[ed] to a blanket assertion of the privilege." Id. p.11.

In the instant Motion for Reconsideration, Epstein has set forth additional facts and detailed reasoning successfully demonstrating how forcing him to answer these requests would realistically and necessarily furnish a link in the chain of evidence needed to prove a crime against him and would require him to provide self-incriminating evidence relative to this case and to the other related cases that could result in a specific hazard of self-incrimination. In light of the additional information provided, the Court is now persuaded that Epstein's whereabouts and telephone numbers are crucial issues in this case and other related cases and that if he is forced to reveal this information, these testimonial disclosures could subsequently be used to incriminate him and/or prosecute him for a criminal offense. See Hoffman v. United States, 341 U.S. 479, 486 (1951); United States v. Hubbell, 530 U.S. 27, 36 (2000).

As such, the Court hereby vacates that portion of the August 4, 2009 Order which grants Plaintiff's Motion to Compel as it relates to Interrogatory Numbers 7 and 11 and instead denies Plaintiff's Motion in this limited respect. Accordingly, Epstein's assertion of his Fifth Amendment privilege as it relates to Interrogatory Numbers 7 and 11 is sustained and he need not provide answers to these questions.

MORE PARTICULARIZED SHOWING (D.E. #283)

In the August 4, 2009 Order Epstein was ordered to provide a more particularized showing with respect to Production Requests 10, 11, 19 and 21, so as to demonstrate why his Fifth Amendment privilege as applied to these requests should be sustained. Epstein has sustained his burden in this regard by his showing that the contested requests for

production seeking detailed information relating to Epstein's air travel, aircraft used and flight manifests, all communications with female models, MC2 models or Jean Luc Brunel relating or referring to females coming into the United States from other countries and his personal calendars and schedules, could reveal the availability to him and/or use by him of interstate facilities and thus would constitute a link in the chain of evidence that could potentially expose him to the dangers of self-incrimination.

In this and the other civil actions, Plaintiffs allege that Epstein violated certain federal and state criminal statutes in an attempt to make claims against Epstein ranging from sexual battery to intentional infliction of emotional distress. The lynchpin for the exercise of federal criminal jurisdiction under 18 U.S.C. §2422(b), which figures in some of the Complaints filed, is "the use of any facility or means of interstate or foreign commerce" and the analogous essential element of 18 U.S.C. §2423((b), which also figures in some of the Complaints, is "travel[s] in interstate commerce or travels into the United States or ... travels in foreign commerce." Accordingly, requiring Epstein to provide responses to the subject production requests would in essence be compelling him to provide assertions of fact, thereby admitting that such documents existed and further admitting that the documents in his possession or control were authentic. In re Grand Jury Subpoena, 1 F.3d 87, 93 (2d Cir. 1993)(noting that in those instances where the existence and/or location of the requested documents are unknown, or where production would "implicitly authenticate" the requested documents, the act of producing responsive documents is considered testimonial and is protected by the Fifth Amendment).

In summary, the Court finds that the danger Epstein faces by being forced to respond and produce documents relative to Production Requests 10, 11, 19 and 21 is

substantial and real and therefore the assertion of his Fifth Amendment privilege relative to these requests is sustained and Plaintiff's Motion to Compel as it relates to these requests is denied.

In accordance with the above and foregoing, it is hereby

ORDERED AND ADJUDGED as follows:

(1) Defendant's Motion for Reconsideration and/or Request for Rule 4 Review and Appeal of Portions of the Magistrate's Order (D.E. #282) is **GRANTED**. The undersigned has reconsidered the August 4, 2009 relative to Interrogatory Numbers 7 and 11 and finds Epstein's assertion of his Fifth Amendment privilege as to these requests valid. Accordingly, that portion of the August 4, 2009 Order which grants Plaintiff's Motion to Compel as it relates to Interrogatory Numbers 7 and 11 is hereby **VACATED**. Instead, Plaintiff's Motion to Compel as it relates to Interrogatory Numbers 7 and 11 is denied. Accordingly, Epstein's assertion of his Fifth Amendment privilege as it relates to these interrogatories is sustained and he need not provide answers to these questions; and

(2) Defendant's Supplementary Brief pursuant to Magistrate's Order Requesting a More Particularized Showing Re: Fifth Amendment (D.E. #283) is **GRANTED**. Because the Court finds the danger Epstein faces by being forced to respond and produce documents relative to Production Requests 10, 11, 19 and 21 is substantial and real, his assertion of his Fifth Amendment privilege relative to these requests is sustained and Plaintiff's Motion to Compel as it relates to these requests is denied.

DONE AND ORDERED this September 9, 2009, in Chambers, at West Palm Beach,

Florida.



LINNEA R. JOHNSON
UNITED STATES MAGISTRATE JUDGE

CC: The Honorable Kenneth A. Marra
All Counsel of Record

IN THE CIRCUIT COURT OF THE
15TH JUDICIAL CIRCUIT IN AND
FOR PALM BEACH COUNTY
FLORIDA

CASE NO:
502008CA037319XXXXMB AB

█,

Plaintiffs,

vs.

JEFFREY EPSTEIN,

Defendants.

_____ /

AMENDED COMPLAINT

Plaintiff, JANE DOE (█), brings this Complaint against Defendants, JEFFREY EPSTEIN, and states as follows:

Parties, Jurisdiction and Venue

1. █ brings this Complaint under a fictitious name to protect her identity, because the Complaint makes sensitive allegations of sexual assault and abuse that she suffered while a minor.
2. █ is a citizen and resident of the State of Florida. She is currently over the age of 18 and otherwise *sui juris*.
3. Defendant, Jeffrey Epstein, is currently incarcerated in Palm Beach County, is a citizen and resident of Palm Beach County, Florida, has full intent to stay in Palm Beach County after his incarceration and is otherwise *sui juris*.
4. Defendant, █, is a citizen and resident of the State of New York and otherwise *sui juris*.



5. This is an action for damages in excess of Fifteen Thousand Dollars (\$15,000), exclusive of interest and costs.

6. Venue is proper in this Court under section 47.011, Florida Statutes, because the causes of action brought herein accrued in Palm Beach County, Florida, and one or more Defendants reside in Palm Beach County, Florida.

Factual Allegations

7. At all relevant times, Defendant, Jeffrey Epstein, was an adult male. Mr. Epstein is a financier and money manager with a secret clientele limited exclusively to billionaires. He is a man of tremendous wealth, power and influence. Before confinement, he maintained homes in New York, New Mexico, St. Thomas, U.S. Virgin Islands, and Palm Beach, Florida. The allegations herein concern Mr. Epstein's conduct while at his lavish estate in Palm Beach.

8. Upon information and belief, Mr. Epstein has a sexual preference and obsession for minor girls. He engaged in a plan, scheme, and/or enterprise wherein he gained access to primarily economically disadvantaged minor girls in his Palm Beach home and sexually assaulted the girls, or coerced or attempted to coerce the girls to engage in prostitution, and then gave them money.

9. In or about 2005, ■■■■, then 15 years old, fell victim to Mr. Epstein's trap described above, at Mr. Epstein's Palm Beach estate.

10. Upon information and belief, Mr. Epstein carried out this scheme/enterprise and assaulted girls in Florida, New York and on his private island, known as Little St. James, in St. Thomas, U.S. Virgin Islands.

11. Integral conspirators in Mr. Epstein's Florida scheme/enterprise were Defendant; ■■■■■■■■■■, an assistant of Mr. Epstein from New York City, New York; and ■■■■■■■■■■ a

Facts Specific to [REDACTED].

13. Consistent with the foregoing plan, scheme, and/or enterprise, [REDACTED], then 15 years of age, was recruited to give Mr. Epstein a massage for monetary compensation. [REDACTED] was brought by taxi with another girl 15 years of age to Mr. Epstein's mansion in Palm Beach. [REDACTED] and the other girl were brought into the kitchen of the home and led up the flight of stairs to a large bathroom containing a massage table. Upon arriving in the bathroom, a young woman, on information and belief, Ms. [REDACTED], exited a sauna wearing only a towel, placed a tube of lotion on the counter and stated, "I guess you will need this more than I will."

14. Several minutes later, Mr. Epstein came into the bathroom and shut the door behind him, told both girls to remove their clothes and undressed himself. Mr. Epstein then placed a small washcloth over his genitals and asked both girls to rub lotion on his naked body. At some point Mr. Epstein told the other 15 year old girl to leave the room, leaving [REDACTED] alone with Mr. Epstein. Mr. Epstein then began to masturbate while [REDACTED] was massaging him.

15. At this point, Mr. Epstein specifically asked [REDACTED] her age, to which [REDACTED] honestly advised she was 15 years old.

16. Mr. Epstein took his free hand and began to touch [REDACTED] between her legs and in her genitals while simultaneously masturbating himself. [REDACTED] told Mr. Epstein to stop, but he continued to rub [REDACTED] between her legs in her genital area. Mr. Epstein then ejaculated and told [REDACTED] she could get dressed.

17. [REDACTED] was then allowed to get dressed, leave the room and go back down the stairs and into the kitchen. Mr. Epstein gave the other 15 year old girl money and told [REDACTED] that this girl "had her money" and then left. [REDACTED] was given \$200 by the other 15 year old girl.

18. As a result of this encounter with Mr. Epstein, the 15 year old [REDACTED], experienced confusion, shame, humiliation and embarrassment, and the assault sent her life into a downward spiral.

COUNT I
Sexual Battery against Defendant Epstein

19. Plaintiff [REDACTED], repeats and realleges paragraphs 1 through 18 above.

20. This is a count for sexual battery against Defendant, Mr. Epstein.

21. Mr. Epstein sexually battered [REDACTED], at a time when she was 15 years old.

22. During this incident Epstein exploited his natural authority and trust as an adult with a minor.

23. Plaintiff [REDACTED], because of her age at the time of this incident, did not have the legal ability to consent to the sexual acts as described above.

24. Mr. Epstein's actions amounted to a harmful, unapproved and intentional touching of [REDACTED].

25. Epstein inflicted harmful or offensive contact on [REDACTED], with the intent to cause such contact, alternatively, [REDACTED], had the apprehension that such contact was imminent.

26. Plaintiff is in need of therapy and counseling, so that she can deal with the shame associated with this incident.

27. As a direct and proximate result of Mr. Epstein's assault on [REDACTED], she has suffered and will continue to suffer severe and permanent traumatic injuries, including mental, psychological and emotional damages.

WHEREFORE, Plaintiff, [REDACTED], demands judgment against Defendant, Jeffrey Epstein, for compensatory damages, costs, and such other and further relief as this Court deems just and proper.

COUNT II
**Intentional and/or Reckless Infliction of Emotional Distress against
Defendants Epstein**

28. Plaintiff [REDACTED] repeats and realleges paragraphs 1 through 18 above.

29. This is a count for intentional infliction of emotional distress against Defendant, Mr. Epstein.

30. The conduct of Defendant Mr. Epstein in subjecting [REDACTED] to Mr. Epstein's actions as described above was intentional or reckless.

31. The conduct of Defendant, Mr. Epstein in subjecting [REDACTED] to Mr. Epstein's conduct described above was outrageous, going beyond all bounds of decency.

32. The conduct of Defendant Mr. Epstein, in subjecting [REDACTED] to Mr. Epstein's conduct described above, caused [REDACTED] severe emotional distress. Defendant knew or had reason to know that their intentional and outrageous conduct would cause emotional trauma and damage to [REDACTED].

33. As a direct and proximate result of Defendant's intentional and/or reckless conduct, [REDACTED] suffered and will continue to suffer severe mental anguish and pain.

WHEREFORE, Plaintiff [REDACTED] demands judgment against Defendant, Jeffrey Epstein, for compensatory damages, costs, attorney's fees, and such other and further relief as this Court deems just and proper. Further, Plaintiff reserves the right to amend this Complaint to add a claim for punitive damages pursuant to Florida Law.

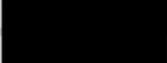
JURY TRIAL DEMAND

Plaintiff demands a jury trial in this action.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished by U. S. Mail, postage prepaid, this ___ day of April, 2009 to Jack A. Goldberger, Esq./Bruce E. Reinhart, Esq., 250 Australian Ave, Ste 1400, WPB, FL 334101; Robert D. Critton, Jr., Michael J. Pike, 515 North Flagler Drive, Suite 400, West Palm Beach, FL 33401.

LEOPOLD-KUVIN, P.A.
2925 PGA Boulevard
Suite 200
Palm Beach Gardens, FL 33410

 (facsimile)

By: _____
SPENCER T. KUVIN, Esq.
Florida Bar No.: 089737

9/14

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

CASE NO. 502008CA037319XXXMB AB

█,.

Plaintiff,

v.

JEFFREY EPSTEIN,
█,

Defendants.

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SEP 14 2009
SHARON D. BOOK
CLERK & COMPTROLLER
CIRCUIT CIVIL DIVISION

EPSTEIN'S OBJECTIONS TO █ REQUEST FOR ENTRY UPON LAND, MOTION
FOR PROTECTIVE ORDER AND INCORPORATED MEMORANDUM OF LAW

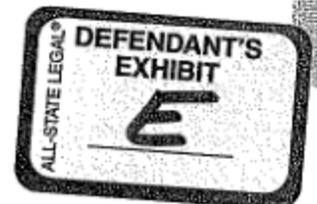
Defendant, JEFFREY EPSTEIN ("Epstein"), objects to Plaintiffs, █. (█),
Request for Entry Upon Land ("Request") (attached as Exhibit A), moves for a
protective order pursuant to Fla. R. Civ. P. 1.280(c), and states:

I. Introduction

1. On August 13, 2009, █ served her Request seeking to:

Inspect the entire property located at [358 El Brillo Way],
including but not limited to the driveway, the interior of the
house, each and every room in the house, the massage
table, the backyard, the swimming area and all other areas
located on said property.

2. █ asserts the inspection will take approximately 4 hours. She also states
the inspection will be attended by an unspecified number of lawyers, a videographer,
members of the "video team," a photographer, members of the "photography team" and
various "other persons to assist in the process" (i.e. a "cast of thousands" a/k/a Cecil B.
DeVille). See Request ¶3.



3. Epstein objects to the Request on the following grounds:
 - a. Violation of the Due Process Clause of the Fifth and Fourteenth Amendments in that this Court is being asked to authorize a general search and seizure by a private party of the entirety of the Epstein's private residence, including an intrusive 4 – hour videotaping (i.e. it is being asked to authorize a search and seizure by private parties that it could not authorize if requested by the Government), all in violation of Epstein's right to privacy and due process;
 - b. Risks compromising the defendant's Fourth Amendment right to the extent that the video – or testimony about the view – was provided, voluntarily or via subpoena to any state or federal law enforcement or prosecutorial authority
 - c. Violation of the Fifth Amendment protection against self-incrimination;
 - d. Not relevant, material or reasonably calculated to lead to the discovery of admissible evidence; further, has the capacity to compromise the accuracy of the memories of █ and any other witness who is permitted to attend or view the photo/video results of the inspection and is therefore in conflict with the parties interest in a trustworthy fact-finding process;

- e. Overbroad;
- f. Unduly burdensome;
- g. Violation of constitutional right of privacy;
- h. Harassing;

4. Reading █ Request, one would think █ intention is to shoot a reality television show. But this is not reality TV; this is a lawsuit. The scope of █ Request is absolutely absurd and the Court should prohibit the requested inspection or, in the alternative, substantially limit the inspection, order that it only occur after █ and all other witnesses have been deposed, and subject any photographs or video to a protective order precluding any dissemination to any third parties.

II. **Permitting the Requested Inspection Would Be Akin to an Illegal Search and Seizure Prohibited by the Fourth Amendment**

5. █ essentially asks the Court to order a warrantless search and seizure of Epstein's residence. The inspection is analogous to a search as █ seeks to enter Epstein's residence, inspect (i.e. search) the residence without limit, photograph (i.e. seize) images of the residence, all because █ claims she was sexually abused by Epstein.

6. The Fourth Amendment to the United States Constitution provides:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

7. Further, the Florida Constitution, Article I, § 12 provides in pertinent part:

The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures, and against the unreasonable interception of private communications by any means, shall not be violated. No warrant shall be issued except upon probable cause, supported by affidavit, particularly describing the place or places to be searched, the person or persons, thing or things to be seized, the communication to be intercepted, and the nature of evidence to be obtained. This right shall be construed in conformity with the 4th Amendment to the United States Constitution, as interpreted by the United States Supreme Court.

8. The overriding purpose of the Fourth Amendment is to protect personal privacy and dignity against unwarranted intrusion by the state, values which are basic to a free society. See Winston v. Lee, 470 U.S. 753 (1985).

9. The Fourth Amendment is designed to prevent, not simply to redress, unlawful government action. See Steagald, 451 U.S. 204 (1981).

10. If the government wished to inspect Epstein's residence, it would first have to obtain a warrant based on probable cause, and the warrant would have to particularly describe the thing to be seized and the place to be searched. See Dalia v. U.S., 441 U.S. 238 (1979).

11. Contrary to the foregoing restrictions imposed on the government, █ seeks a non-particularized and limitless search of Epstein's "entire property." See Exhibit A. (Emphasis in original). Not only does █ ask to search the home, she wants to photograph and videotape (i.e. seize) its contents.

12. The government would likely not be able to conduct the search requested by █: "the entire property located at [358 El Brillo Way] including but not limited to the driveway, the interior of the house, each and every room in the house, the massage table, the backyard, the swimming area and all other areas located on said property." See Exhibit A. Such an overbroad and vague search would certainly not pass muster under the particularity requirement of the Fourth Amendment.

13. Additionally, █ has no probable cause to reasonable believe that any relevant evidence will be obtained from the search. See Section IV., *infra.*, arguing that █ Request is not relevant and not reasonably calculated to lead to the discovery of admissible evidence.

14. Epstein's Fourth Amendment concerns are not unwarranted. In a federal companion case, Jane Doe No. 2 v. Epstein, Case No. 08-CIV-80119 MARRA/JOHNSON, in the United States District Court for the Southern District of Florida, United States Magistrate Judge Linnea R. Johnson found, "[i]n 2008, Epstein entered into a Non-Prosecution Agreement with the United States Attorney General's Office for the Federal Southern District of Florida and the State Attorney's Office for Palm Beach County. Under the terms of the Non-Prosecution Agreement, any criminal prosecution against Epstein is deferred as long as he abides by the certain terms and conditions contained therein. If at any time the United State's Attorney's Office has reason to believe Epstein is in breach of the Agreement, it need only provide Epstein's counsel with notice of the breach and then move forward with Epstein's prosecution.

Accordingly, the undersigned would agree with Epstein ... that the fact there exists a Non-Prosecution Agreement does not mean that Epstein is free from future criminal prosecution, and that in fact, 'the threat of prosecution is real, substantial and present.'" See August 4, 2009 Order on Plaintiff's Motion to Compel Answers to Interrogatories and Production of Documents at 4 (attached as Exhibit B) and September 9, 2009 Omnibus Order at 2 (attached as Exhibit C).

15. Permitting █ attorneys, photographers, videographers and various others to scour Epstein's residence and photograph and videotape its contents runs afoul of the limits set forth in the Fourth Amendment. Indeed, nothing would prevent █ counsel, or anyone on its photography or videography production teams, or any of the various "others," from sharing/providing their photographs and/or videotapes with the United States Attorney's Office ("USAO").

16. Moreover, it is certainly possible that someone in the "cast of thousands" █ requests to be present at the inspection could be a Government informant.

17. Even if the Court entered a protective order limiting the persons entitled to view the photographs/video, it would likely be ineffective against a subpoena from the USAO or a Federal Grand Jury.

18. Thus, the USAO would potentially be provided with a rare glimpse into Epstein home, which it could not otherwise obtain absent a warrant based on probable cause particularly describing the place to be searched. Under these circumstances, the

USAO could circumvent the warrant and probable cause requirements by relying on █ counsel and photography/videography team to perform the search for them.

19. Assuming *arguendo* that a court order permitting a civil party rather than a law enforcement officer is not strictly subject to the Fourth Amendment, as certain cases have held, the policies, principles, and overriding purpose of the Amendment – to provide and protect the citizen's expectation of privacy, particularly in a "man's castle" (i.e. his residence) – should provide the context for the Court's determination of the reasonableness of the request for what at its essence is a court ordered search and seizure.

20. For this reason and the reasons set forth herein, the Court should deny █ Request and preclude any inspection of Epstein's property.

III. The Inspection Could Violate Epstein's Fifth Amendment Rights Against Self – Incrimination

21. The Fifth Amendment privilege against self-incrimination "permits a person not to answer official questions put to him in any other proceeding, civil or criminal, formal or informal, where the answers might incriminate him in future proceedings." See Edwin v. Price, 778 F.2d 668, 669 (11th Cir. 1985) (citing Lefkowitz v. Turley, 414 U.S. 70, 77 (1973)). The privilege is accorded liberal construction in favor of the right and extends not only to answers that would support a criminal conviction, but extends also to those answers which would furnish a link in the chain of evidence needed to prosecute the claimant for a crime. See Hoffman v. United States, 341 U.S. 479, 486 (1951). Information is protected by the privilege not only if it would support a criminal

conviction, but also in those instances where "the responses would merely 'provide a lead or clue' to evidence having a tendency to incriminate." See United States v. Neff, 315 F.2d 1235, 1239 (9th Cir.), cert denied, 447 U.S. 925 (1980).

22. Moreover, the act of production itself may implicitly communicate statement and, for this reason, the Fifth Amendment privilege also encompasses the circumstances where the act of producing documents in response to a subpoena or production request has a compelled testimonial aspect. See United States v. Hubbell, 530 U.S. 27, 35-36 (2000). Thus, where the existence or location of the requested documents are unknown, or where production would "implicitly authenticate" the requested documents, the act of producing responsive documents is considered testimonial and is protected by the Fifth Amendment. See In re Grand Jury Subpoena, 1 F.3d 87, 93 (2nd Cir. 1993).

23. In the instant case, █ requests, for example, to inspect the massage table. See Exhibit A. Any compelled "production" by Epstein of "the massage table" for the inspection would violate his Fifth Amendment rights in that he is implicitly being asked to authenticate it. To the extent █ counsel requests Epstein to identify the room where the alleged acts occurred, such also violates the Fifth Amendment for the same reason.

24. Photographing and videotaping the massage table and the room where the acts allegedly occurred could potentially provide a 'lead or clue' to evidence having a tendency to incriminate but more important, any expectation that Epstein would, as a

result of the motion or any court order, be required to facilitate the inspection by identifying the residence, any part of the residence, any object, or to be ordered to do anything other than to passively acquiesce to a court order would threaten to invade his privilege against being required to produce and/or testify.

25. In Jane Doe No. 2 v. Epstein, Case No. 08-CIV-80119 MARRA/JOHNSON, the Court sustained Epstein's Fifth Amendment objections to interrogatories: asking Epstein to identify all employees who performed work inside his Palm Beach residence and all other employees who came to the residence (Interrogatory Nos. 1 – 2), asking Epstein to identify any who gave or were asked to give him massages (Interrogatories Nos. 3 – 6), requesting information regarding the identity of persons who provided transportation services (Interrogatory No. 9), seeking a list of Epstein's employees' telephone numbers (Interrogatory No. 12), asking Epstein to identify any persons or witnesses who have knowledge or are in possession of physical evidence pertaining to the events in question (Interrogatories Nos. 13, 14 and 17), seeking information related to alleged sexual abuse or misconduct on a minor (Interrogatory No. 15), and seeking the facts on upon which Epstein relies to support pleading denials and affirmative defenses (Interrogatory No. 16). See August 4, 2009 Order on Plaintiff's Motion to Compel Answers to Interrogatories and Production of Documents.

26. If the Fifth Amendment protects Epstein from disclosing the identity of any person who has knowledge or are in possession of physical evidence (i.e. photographs,

videos, written statements, etc.) pertaining the events in question (Interrogatory Nos. 13, 14 and 17 supra), it follows that Epstein's production of the massage table and massage room to be photographed and videotaped would also violate his Fifth Amendment rights. Stated differently, if Epstein can properly invoke his Fifth Amendment right to not identify a person who may have a photograph of, for example, the massage table, how can Epstein be required to produce the massage table for [REDACTED] to inspect, photograph and videotape?

27. To the extent [REDACTED] requests Epstein produce the massage table or authenticate anything in his residence (i.e. the massage room, the kitchen where alleged conversations occurred, etc.), Epstein invokes his rights under the Fifth Amendment.

IV. The Court Should Prohibit an Inspection of Epstein's Residence as Epstein's Home is Irrelevant and Not Reasonable Calculated to Lead to the Discovery of Admissible Evidence

28. Rule 1.350(a)(3), Florida Rules of Civil Procedure, provides:

Any party may request any other party to permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection and measuring, surveying, photographing, testing, or sampling the property or any designated object or operation on it within the scope of rule 1.280(b).

(Emphasis added).

29. Rule 1.280(b), Florida Rules of Civil Procedure, provides in pertinent part, "[p]arties may obtain discovery regarding any matter, not privileged, that is relevant to

the subject matter of the pending action, whether it relates to the claim or defense of the party seeking discovery or the claim or defense of any other party....” (Emphasis added).

30. “Relevant evidence is evidence tending to prove or disprove a material fact.” See Fla. Stat. §90.401.

31. In the instant case, there are no allegations in █ complaint that would be proven or disproven by evidence obtained from the inspection, and the inspection will not lead to the discovery of admissible evidence.

32. █ asserts causes of action for negligence, coercion into prostitution, battery and intentional infliction of emotional distress. See Second Am. Compl. The only allegations in █ 11-page, 4-count complaint regarding Epstein’s residence are:

- a. Epstein had a residence located at 358 El Brillo Way. Id. ¶4;
- b. Epstein plans to reside permanently at 358 El Brillo Way. Id. ¶5;
- c. █ was brought to Epstein’s residence and was left alone in a room at Epstein’s “mansion.” Id. ¶9;
- d. Epstein has a “lavish home.” Id. ¶11;
- e. The alleged acts took place at Epstein’s residence. Id. ¶14; and
- f. Epstein used his house for the purpose of lewdness or prostitution. Id. ¶20D.;

33. What relevant evidence (i.e. tending to prove or disprove a material fact) will be obtained from inspecting Epstein's back yard, the attic, the garage, the cabinets, drawers, storage closets or any other area of the house? The answer is simple: none.

34. Moreover, the room where the alleged acts occurred and massage table were not instrumentalities of the claims alleged in the complaint. The massage table has absolutely no relevance to █ claims, save for the fact that the massage table itself existed. Nothing about the massage table's dimensions, construction or appearance proves or disproves any material facts. The same rationale applies to the massage room. There are no allegations that put the massage room at issue such that a video or photograph will provide relevant evidence or lead to the discovery of admissible evidence.

35. This is not a case where █ fell off the massage table and broke her leg. Nor is this a case where █ slipped and fell in the massage room because of a defect in the floor. Both of those scenarios might provide some justification for an inspection of the massage table and massage room, respectively, because the inspection could lead to the discovery of admissible evidence. See Welzel v. Bernstein, 233 F.R.D. 185, 186 (D.C. 2005) (noting that in cases in which a site inspection has been allowed, the rationale has been because the specific location relates to the cause of action).

36. Nevertheless, the house has been remodeled and thus its appearance is substantially different than when the alleged acts occurred.

37. The following cases addressing entry onto land for inspection illustrate the circumstances under which an inspection may or may not be appropriate:

- a. Strasser v. Yalamanchi, 669 So. 2d 1142 (Fla. 4th DCA 1996) involved a dispute between former plastic surgeon partners related to compensation. Plaintiff requested to inspect defendant's computer for billing and collection information. The court permitted limited access to defendant's computer systems only to search for financial information that had allegedly been deleted. Id. at 1145;
- b. Hauser v. Volusia County Dept. of Corrections, 872 So. 2d 987 (Fla. 1st DCA 2004) (permitting defendant to inspect plaintiffs' residences to collect air samples and observe ventilation systems where plaintiffs claimed they were injured due to exposure to toxic mold at their place of employment);
- c. Menke v. Broward County School Bd., 916 So. 2d 8 (Fla. 4th DCA 2005) (denying unfettered access to defendant's computers in case involving disciplinary proceedings brought against teacher for exchanging sexually explicit emails with students);
- d. Goodyear Tire & Rubber Co. v. Cooley, 359 So. 2d 1200 (Fla. 1st DCA 1978) (quashing order permitting inspection of tire plant because plaintiff did not demonstrate that tires made at the plant were substantially similar to the tire involved in the subject accident,

noting that plaintiff presented no evidence to support the need for an inspection);

- e. Murphy v. Cooper Tire & Rubber Co., 2008 WL 3926715 (N.D. Fla. 2008) (denying request to inspect defendant's tire plant since the tire at issue was no longer manufactured at the plant and since the **plant had been changed** and did not reflect the manufacturing conditions that existed when the subject tire was made; the court noted that the current condition of the plant was "only marginally relevant-at best."); and
- f. Marcort v. Goodwill Industries- Manasota, Inc., 220 F.R.D. 377 (M.D. Fla. 2003) (involving alleged violations of the Americans with Disabilities Act, plaintiff requested a wholesale inspection of defendant's property for ADA compliance. The court limited inspection of defendant's premises to "the specific barriers to access Plaintiffs alleged in their complaint.").

38. The instant case is unlike Yalamachi, where plaintiff sought to inspect defendant's computers for financial information directly relevant to his breach of contract claim; and it is unlike Hauser where the plaintiffs put the quality of the air in their homes at issue by suing their employer for exposure to toxic mold.

39. This case is more analogous to Murphy and Cooey, where the court prohibited inspection because the plaintiffs could not demonstrate the how the inspection would be relevant to their respective cases.

40. Moreover, federal courts have recognized that "entry upon a party's premises may entail greater burdens and risks than mere production of documents" and "the degree to which the proposed inspection will aid in the search for truth must be balanced against the burdens and dangers created by inspection." See Belcher v. Bassett Furniture Industries, Inc., 588 F.2d 904, 908 (4th Cir. 1978) (also known as "The Belcher Test").

41. An inquiry into when to compel an inspection goes beyond mere relevance and must balance the need presented by the moving party against the burdens and dangers created by the inspection. See Johnson v. Mundy Industrial Contractors, Inc., 2002 WL 31464984 *3 (E.D. N.C. 2002) (quotations omitted).

42. As noted by professors Wright & Miller:

[I]t is clear that the right to discovery is a qualified right that **does not extend to making unnecessary and unwarranted excursions onto the property of another under the guise of supportable litigative need.** Public policy supports reasonable and necessary demands for information in the hands of the adversary, in order that the case may be well and truly tried. But any such invasion of a person's property rights must, in the language of our Supreme Court, 'be judged with care Properly to balance these competing interests is a delicate and difficult task.'

See Wright & Miller, Federal Practice & Procedure, §2040 at 286-87 (1970 ed.)

(Emphasis added).

43. Moreover, an inspection of Epstein's residence would violate his constitutional right to privacy. See Fla. Const., Art I. §23. The constitutional right of privacy in the Florida Constitution is broader than the protection provided in the United States Constitution. See Berkeley v. Eisen, 699 So. 2d 789, 790 (Fla. 4th DCA 1997), citing Rasmussen v. South Fla. Blood Serv., Inc., 500 So. 2d 533, 536 (Fla. 1987). Orders compelling discovery constitute state action that may impinge on the constitutional right of privacy. See Berkeley, 699 So. 2d at 790. The court must balance the competing interests, privacy versus the need for discovery, that would be served by granting or denying discovery. Id. at 791.

44. The fact █ wants to photograph and videotape the residence amplifies the invasion of privacy.

45. Again, the Fourth Amendment is implicated. The physical entry of the home is the chief evil against which the Fourth Amendment is directed and a principal protection against unnecessary intrusions into private dwellings is the warrant requirement imposed by the Fourth Amendment. See Welsh v. Wisconsin, 466 U.S. 740 (1984).

46. As set forth herein, Epstein's residence is, **at best**, only marginally relevant to the instant case. On the other hand, the right of privacy in one's home is sacred.

47. For the foregoing reasons, the Court should deny █ Request and enter a protective order, pursuant to Fla. R. Civ. P. 1.280(c), prohibiting such discovery as it is

harassing, not relevant or reasonably calculated to lead to the discovery of admissible evidence and violates Epstein's constitutional right to privacy.

V. Alternatively, if the Court Permits Inspection, it Should be Strictly Limited

48. If the Court finds the home inspection will somehow yield relevant evidence and outweighs Epstein's right of privacy, the inspection should be limited to the following:

- a. One photographer, accompanied by one attorney;
- b. To take five (5) still photographs (no video) of the room in which the alleged acts occurred¹;
- c. To be supervised by Epstein's security guard and his attorney;
- d. To be completed in 30 minutes or less; and
- e. █ be required to produce copies of all photographs to Epstein's counsel.

49. █ Request to inspect the "entire property" for four hours with an entourage of attorneys, videographers, photographers, and their respective teams and "various others to assist in the process" is grossly overbroad. There are no allegations placing, for example, the back yard at issue. █ only alleges that certain acts took place in a particular room. Thus, the inspection should be limited to said room.

50. Just as the Government, constrained by the Fourth Amendment, would first have to obtain a warrant based on probable cause, and the warrant would have to

¹ For the reasons set forth in Section III., *supra*, neither Epstein nor his counsel nor any of his employees will identify or show █ counsel or photographers the room where the alleged acts occurred. █ should have no problem providing her counsel with sufficient information to identify the room.

particularly describe the thing to be seized and the place to be searched (see Dalia v. U.S., 441 U.S. 238 (1979)), so should this Court require [REDACTED] to justify her Request (i.e. show probable cause). That is, [REDACTED] should be required to demonstrate to the Court the relevant evidence she intends to discover and where said evidence is reasonably believed to be. If, and only if, [REDACTED] presents sufficient evidence to justify the inspection, the Court's order should particularly describe the place to be searched based on the evidence put forth by [REDACTED] (i.e. the room in which the alleged acts occurred).

51. In addition, having teams of photographers, videographers, attorneys and "others" present at a four-hour inspection is unduly burdensome for Epstein to endure in his own home. It is also harassing.

52. Moreover, such a scenario is ripe for misconduct. With a large group of people trouncing around Epstein's house, it is not beyond the bounds of reasonable possibility that something would be stolen or broken. And given the amount of publicity surrounding this case and its contentious nature, it would not be difficult for a member of the "photography team," for example, to sneak off and photograph irrelevant portions of the home and either publish or sell the photos.

53. In Welzel v. Bernstein, plaintiff brought an action against her former employer alleging discrimination and retaliation. 233 F.R.D. 185. Plaintiff asserted the office configuration exacerbated her mistreatment by defendant. The court noted that plaintiff could argue she suffered heightened emotional distress because other employees were aware of how she was being treated by virtue of the glass walls in her

office. Id. at 187. In permitting the inspection, the court limited it to one-hour and to the suite of offices at issue.

54. While █ has not and cannot demonstrate a need for inspection like the plaintiff in Welzel (i.e. that the configuration of the office itself exacerbated her emotional distress), if the Court permits an inspection of Epstein's residence, it should enter a protective order limiting the scope to the room in which the alleged acts occurred and limiting the time to one half hour. See Fla. R. Civ. P. 1.280(c) (permitting the court to limit the scope of discovery).

55. Additionally, any photographs should be subject to a confidentiality order. The photographs should be strictly limited for use in this litigation, not shown to anyone except counsel and experts, and returned to Epstein after the conclusion of this litigation. Any expert permitted to view the photographs should be required to sign an assurance providing that he or she agrees to abide by the terms of a confidentiality order. Due to the substantial due process and privacy concerns articulated herein, the Court should further order that a violation of the confidentiality order be punishable by contempt of court. █ attorneys have not been shy about contacting the press.

VI. Any Inspection Should Occur After █ Deposition and Just Prior to Trial

56. If the Court permits an inspection, it should take place shortly before trial, but after █ has been deposed to avoid any attempt by her to tailor her testimony to the information obtained from the inspection. The integrity of █ memory will be compromised if she is permitted to view images from inside the residence. An analogy

can be made to cases involving impermissibly suggestive showups.² See e.g. Neil v. Biggers, 409 U.S. 188 (1972). In Neil, the United States Supreme Court, addressing suggestive showups, noted that “the primary evil to be avoided is a very substantial likelihood of irreparable misidentification.” Id. at 198. (Internal quotations omitted). It went on to state that suggestive confrontations are disapproved because they increase the likelihood of misidentification, which would violate a defendant’s due process rights. Id.

57. Just like a victim’s propensity to misidentify a criminal suspect in a suggestive showup, there is a strong likelihood that █ will tailor her recollection and testimony to the photographs/video taken at the inspection. There would be no way to test whether her testimony was a result of independent recollection of the alleged events or from viewing the photographs. This would, of course, violate Epstein’s due process rights.

58. On the other hand, █ will not be prejudiced by postponing the inspection until after her deposition.

59. Ergo, if the Court permits █ to inspect Epstein’s residence, Epstein requests the inspection be conducted after █ deposition and just prior to trial.

WHEREFORE, Defendant, JEFFREY EPSTEIN, respectfully requests the Court sustain his objections to E.W.’s Request for Entry Upon Land, enter a protective order precluding entry on Epstein’s property or, in the alternative, enter a protective order

² A “showup” is a pretrial identification procedure in which a suspect is confronted with a witness to or the victim of a crime. Unlike a lineup, a showup is a one-on-one confrontation. See Black’s Law Dictionary (8th ed. 2004).

limiting the inspection as follows: (a) one photographer, accompanied by one attorney; (b) to take five (5) still photographs (no video) of the room in which the alleged acts occurred; (c) to be supervised by Epstein's security guard and Epstein's attorney; (d) to be completed in 30 minutes or less; (e) to occur after █'s deposition; and (f) any photographs be subject to a confidentiality order proscribing dissemination to anyone except █'s counsel and experts, a violation of which would be punishable by contempt of court, and to grant any additional relief the Court deems just and proper.

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 14th day of September, 2009:

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█. v. Epstein

Case No. 502008CA037319XXXXMB AB

Epstein's Objections to █ Request and Motion for Protective Order

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(Counsel for Defendant Jeffrey Epstein)