

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

ORDER

THIS CAUSE is before the Court on Plaintiff Jane Doe No.2's Motion to Compel Compliance with Subpoena and for Order of Contempt Against Alfredo Rodriguez (D.E. #469). The time period for filing a response in opposition to the subject Motion has passed and Mr. Rodriguez has elected to not file a response to the Motion. Noting Mr. Rodriguez' failure to file a response to the Motion, it is hereby

ORDERED AND ADJUDGED that said Motion, Plaintiff Jane Doe No.2's Motion to Compel Compliance with Subpoena and for Order of Contempt Against Alfredo Rodriguez (D.E. #469), is **GRANTED IN PART BY DEFAULT** pursuant to and in accordance with S.D. Fla. L.R. 7.1.C, as follows.

The Court hereby grants by default that portion of the Plaintiff's Motion seeking an

order compelling Rodriguez to comply with the July 25, 2009 Subpoena requesting any and all journal, notes diaries and writings relating to Jeffrey Epstein including the journal described by Rodriguez to Palm Beach Police that contains the names of girls who visited the residence. The Court declines at this time to find Rodriguez in contempt of Court. Should Rodriguez fail to comply with the within Order compelling production, Plaintiff may file a renewed motion for contempt at that time.

On February 1, 2010, after Rodriguez appeared for deposition and claimed he did not have the documents subpoenaed, Rodriguez was arraigned in federal court on obstruction of justice charges based on allegations that he intentionally withheld documents from federal and state law enforcement authorities. According to the criminal complaint, after making misrepresentations to federal law enforcement officials and withholding documents, he attempted to sell these same documents to a cooperating witness for \$50,000. This alleged offer to sell was made after his August 7, 2009 deposition at which he testified under oath that he did not possess the documents.

To the extent Rodriguez still retains a copy of the subject journal, he is ordered to produce same within ten (10) days from the date hereof. To the extent Rodriguez does not have in his possession a copy of the subject journal, he is ordered to, within three (3) from the date hereof, provide the government in his criminal case with a written request for said journal and within the same time period furnish the Plaintiff in this case with a copy of said request. Thereafter, Rodriguez shall have three (3) days from receipt of said journal from the Government, to produce same to the Plaintiff herein. See United States v. Bagley, 473 U.S. 667 (1985) (U.S. Attorney's Office has an affirmative duty to produce all evidence in their possession that is material to the guilt of the defendant, regardless of whether that

information was requested by the defendant or not). Rule 45(a)(1)(I), Fed. R. Civ. P., permits a party to subpoena documents from a non-party that are within "that person's possession, custody or control." The term "control" under the federal discovery rules includes not only documents in the non-party's possession, but also "the legal right to obtain the documents requested on demand." Searock v. Stripling, 736 F.2d 650 (11th Cir. 1984). Inasmuch as Rodriguez has the right to obtain the subpoenaed documents under Bagley or in the normal course of discovery in his criminal case, the fact Rodriguez may not have the documents requested in the subpoena *at the moment* is irrelevant. In accordance with the above and foregoing, it is hereby

ORDERED AND ADJUDGED that Plaintiff Jane Doe No.2's Motion to Compel Compliance with Subpoena and for Order of Contempt Against Alfredo Rodriguez (D.E. #469) is **GRANTED IN PART** in accordance with the terms herein.

DONE AND ORDERED this June 1, 2010, in Chambers, at West Palm Beach, Florida.



LINNEA R. JOHNSON
UNITED STATES MAGISTRATE JUDGE

CC: The Honorable Kenneth A. Marra
All Counsel of Record
Fedl. Public Defender, Dave Lee Brannon, Counsel for Non-Party Rodriguez
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