

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
FORT LAUDERDALE DIVISION
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IN RE: CASE NO. 09-34791-RBR
ROTHSTEIN ROSENFELDT ADLER, P.A., CHAPTER 11
Debtor.

JEFFREY EPSTEIN'S WRITTEN OPENING STATEMENT

Jeffrey Epstein ("Epstein"), pursuant to the Court's Order to Show Cause Why Fowler White and Jeffrey Epstein Should Not Be Held in Contempt and Scheduling Evidentiary Show Cause Hearing [D.E. 6366], submits this Written Opening Statement, and states:

INTRODUCTION

A. Background: Link & Rockenbach's Appearance in the State Court Proceeding, and the Circumstances of the CD's Discovery.

On November 1, 2017, Epstein's counsel, Link & Rockenbach, PA, made its first appearance in *Epstein v. Rothstein, Edwards, and L.M.*, No. 50-2009CA040800XXXXMBAG (Fla. 15th Cir. Ct.), pending in state court in Palm Beach County, Florida (the "state court proceeding"). At that time, Link & Rockenbach had not yet received Epstein's files possessed by one of his former counsel—Fowler White Burnett, P.A. ("Fowler White"), whose representation of Epstein terminated over six years ago in May 2012.¹ Epstein, as is his right, requested Fowler White to turn over his files to Link & Rockenbach.

¹ From the production it *had* received by that time, Link & Rockenbach *did* know that there had been a subset of documents produced in the litigation on May 7, 2012, which contained eighty-four documents that had been listed on Farmer, Jaffe, Weissing, Edwards Fistos & Lehrman, P.L.'s privilege log, that had nonetheless been filed with the state court, including as summary judgment evidence. Further, Link & Rockenbach knew that Edwards had testified to having reviewed 26,000 pages of e-mails and producing them to Epstein.

On January 10, 2018, Link & Rockenbach traveled to Miami, Florida, to review Fowler White's files associated with the state court proceeding, which filled approximately thirty-six boxes. Fowler White, however, was unwilling to release its boxes at that time, so Link & Rockenbach flagged items, from twenty-four boxes, to be copied. Inside one of those boxes, and flagged, was a compact disc ("CD") labeled "Epstein Bate Stamp." Link & Rockenbach did not review any materials, or the contents of any discs, during that visit. Epstein was not present.

On February 1, 2018, Link & Rockenbach received three boxes from Fowler White containing copies of the items flagged for reproduction. Link & Rockenbach's review of the contents of the CD marked "Epstein Bate Stamp" on February 25, 2018 revealed 27,542 pages of emails that were consecutively Bates stamped, which *did not* contain a pre-fix indicating who produced them, or any watermark, confidentiality, or privilege designation. Of these, Link & Rockenbach reviewed approximately 5,000 pages, and ultimately identified numerous e-mails that it deemed pertinent to Epstein's defense in the state court proceeding.

Link & Rockenbach then diligently reviewed the state court's and bankruptcy court's files for confidentiality stipulations or orders, searched former counsels' records, spoke with former counsel from Fowler White, and asked Edwards' counsel if any confidentiality orders governed the use of trial exhibits. These activities revealed that there were no confidentiality orders in effect. Further, other factors—including the fact that Edwards had testified about producing 26,000 pages of e-mails to Epstein, and that other documents had been produced in the case notwithstanding their identification on Farmer Jaffe's privilege log—indicated to Link & Rockenbach that the documents in its possession, derived from the CD, had previously been produced in the case. After undertaking these activities and analysis, Link & Rockenbach filed an illustrative sample of these e-mails as part of an Appendix, and served them, and others, to Edwards' counsel as part of a

newly discovered trial exhibit list. Link & Rockenbach also provided copies of select e-mails to Epstein, his general counsel, and its co-counsel.

As it turns out, less than two weeks later, Link & Rockenbach learned (through untoward accusations of unethical conduct) of Edwards' claim that the CD had not been produced and that allegedly Fowler White was in violation of this Court's November 2010 Agreed Order by retaining it. Edwards claims that the CD contains the entire realm of documents gathered in response to Epstein's April 2010 Subpoena, which included both documents ultimately produced to Epstein and documents that were withheld as privileged and identified on Farmer Jaffe's Privilege Log. Epstein identified 47 of those alleged privileged documents on his March 2018 Clerk's Trial Exhibit List in the state court proceedings.

On March 8, 2018, the parties in the state court proceeding attended a lengthy hearing where the trial judge—while finding that neither Link & Rockenbach nor Epstein had done anything wrong—handed down extensive rulings governing further usage and safekeeping of the documents. Since then, pursuant to agreements of the parties and court orders, Link & Rockenbach (notwithstanding its claims that no privileges exist) has taken additional, extensive efforts to comply with the state court's rulings—and done more—to protect the purportedly privileged nature of the materials, including:

- Ceasing any and all further dissemination of the documents, including those identified on the Appendix filed in the state court proceeding, the disclosed trial exhibits, or any other item contained on the CD that Farmer Jaffe, Edwards and the Intervenors asserted a privilege over;
- Consenting to the Intervenors' Motion to Seal Court Records Until the Court Makes a Determination on How the Documents Shall be Treated;
- Working through the weekend of March 10-11, 2018, with Edwards' counsel and the duty judge to obtain an order sealing the allegedly privileged items which had been filed onto the public court docket;

- Destroying the paper copy of the Redacted Appendix that was filed in the state court proceeding and deleting the electronic version from its computer system;
- Placing the Unredacted Appendix in a sealed box to be maintained in its offices;
- Placing an exhibit sticker on the trial exhibits and placing them in sealed envelopes, moving to make these records confidential, agreeing to an order sealing these filings, and retaining a set of these exhibits in a sealed envelope in a sealed box in its offices;
- Placing the original CD in a sealed envelope and destroying all other hard copies of documents Link & Rockenbach reproduced from the CD; and
- Deleting an electronic duplicate of the CD and the electronic versions of all subject documents from an online service by which the documents were transmit, and beginning to delete saved electronic documents from its computer system (however, Link & Rockenbach ceased these steps based on Edwards' and the Intervenors' objections to further deletion of electronic documents).

B. The Court's November 30, 2010 Agreed Order.

Moving backwards in time, there is only one sentence of this Court's November 30, 2010 Agreed Order (the "Agreed Order") that applies to Epstein: "Should it be determined that Fowler White or Epstein retained images or copies of the subject documents on its computer or otherwise, the Court retains jurisdiction to award sanctions in favor of Farmer, Brad Edwards or his client." [D.E. 1194, at 2]. Even assuming that this provision of the Agreed Order is sufficiently clear to warrant potential sanctions for its violation, the evidence will point to but a single conclusion: That Epstein never violated either the letter or the spirit of the Agreed Order. This Court entered the Agreed Order almost eight years ago in connection with Farmer Jaffe's efforts to comply with subpoenas that Epstein served on the Rothstein Rosenfeldt & Adler Trustee in 2010, because Farmer Jaffe did not want to pay for copies. The Agreed Order was a way to prevent a "gotcha" play by Fowler White after it provided copies of the subject documents to Special Master Carney and Farmer Jaffe, and served that purpose. The nearly eight-year-old Agreed Order *in no way* contemplated its violation under such unpredictable circumstances as those at hand.

The evidence will show that Epstein was not provided with the CD by Fowler White and had no knowledge that the CD existed at all before 2018. Epstein never received a copy of the 27,000+ pages when Fowler White provided copies to Farmer Jaffe and the Special Master in 2010, never had the CD, never knew that it existed in the bowels of Fowler White's file room, untouched for seven years.

As explained in greater detail below, the evidence will show that the Order to Show Cause should be discharged, and no sanction against Epstein imposed, for two reasons: 1) Epstein never violated the Agreed Order; and 2) no sanction could either coerce Epstein into compliance or compensate Farmer Jaffe, Edwards or the Intervenors for actual, compensatory losses—because they have none. Based on the evidence that has been and will be elicited in this show cause proceeding, Epstein respectfully requests that this Court discharge its Order to Show Cause, deny the requests of Farmer Jaffe, Edwards and the Intervenors for Epstein to be held in contempt of court, or for any other sanctions against him.

**THE EVIDENCE WILL SHOW THAT THE ORDER TO SHOW CAUSE SHOULD BE
DISCHARGED AND NO SANCTIONS IMPOSED**

A. The Evidence Will Show That Epstein Did Not Violate the Court's November 30, 2010 Agreed Order.

The testimony in the depositions authorized by the Court, the sworn declarations of fact, and the evidence to be elicited at the evidentiary hearing on this Court's Order to Show Cause will show that Epstein never violated the Agreed Order, and accordingly, that there is no basis to hold him in statutory contempt or impose other sanctions under 11 U.S.C. § 105(a).

Farmer Jaffe, Edwards and the Intervenors bear the burden to demonstrate that Epstein violated the Agreed Order by clear and convincing evidence. However, the evidence will show that Epstein did not know the CD existed while it sat, untouched for seven years, in Fowler White's

file room. Epstein had no knowledge of Fowler White's actions and, regardless of what Fowler White did nor did not do, did not consent to any material action or omission by Fowler White. Epstein has repeatedly informed Farmer Jaffe, Edwards, the Intervenors and this Court that he was never provided with a copy of the CD or its contents when Fowler White provided copies of documents to Farmer Jaffe and the Special Master in 2010 or thereafter, and only learned in February 2018 of the CD's existence and its contents.

The Court has properly indicated that it is not considering the imposition of sanctions against Epstein for conduct occurring in the state court proceeding in 2018. Even assuming *arguendo* that such conduct is within the scope of the Court's Order to Show Cause and rulings to date (though it is not), the evidence will illustrate the lack of any factual or legal basis to punish Epstein.

Although Farmer Jaffe, Edwards and the Intervenors do not seek sanctions against Link & Rockenbach, as Epstein's challenged conduct is completely intertwined with Link & Rockenbach's—it is important to note that Link & Rockenbach did nothing wrong. Indeed, the evidence will show that the state court judge expressly found as much. The evidence will also show that the former Ethics Director of the Florida Bar has opined that Link & Rockenbach did not wrongfully retain any of the materials in question and acted in an ethical and proper manner in all respects as it relates to its discovery of the materials on the CD, and in its handling of the matter in the state court proceeding after the claims of privilege by Farmer Jaffe, Edwards and the Intervenors were brought to its attention.

At the conclusion of the show cause proceeding, therefore, based on the evidence, Epstein will respectfully request that the Court discharge the Order to Show Cause and deny all claims for relief by Farmer Jaffe, Edwards and the Intervenors. Epstein never violated the Agreed Order.

B. The Evidence Will Show That Neither Farmer Jaffe, Edwards Nor the Intervenors are Entitled to Compensatory Sanctions from Epstein Because There was No Violation, There is Nothing to Compel Compliance With, and None Have Sustained Any Actual Losses.

In its Order to Show Cause, the Court stated that if it made a finding of civil contempt, it would consider imposing “compensatory sanctions for actual damages” incurred, recognizing that such sanctions may serve to “coerce the defendant into compliance with the court’s order, and to compensate the complainant for losses sustained.” [D.E. 6366, at 4] (citation omitted). The evidence, however, will show that there is nothing to coerce Epstein into compliance with, and that neither Farmer Jaffe, Edwards nor the Intervenors are able to prove any actual damages attributable to Epstein’s alleged violation of the Agreed Order.

Initially, for the reasons stated above, the evidence will show that there is no sanction that could serve the purpose of coercing Epstein into compliance with the Agreed Order. There is nothing for Epstein to comply with. Epstein never retained images or copies of the privileged materials within the meaning of the Agreed Order.

The evidence will also show that there is no sanction that could serve to compensate Farmer Jaffe, Edwards or the Intervenors for losses sustained—because they have no damages. Concerning Farmer Jaffe and Edwards, Farmer Jaffe seeks attorneys’ fees and costs paid to *Edwards* for bringing its Motion for Order to Show Cause, and a daily sanction of \$1,000, while Edwards seeks attorneys’ fees and costs for joining Farmer Jaffe’s Motion for Order to Show Cause, attorneys’ fees and costs related to state court proceedings, and a daily sanction of \$1,000. *See* D.E. 6394. First, in light of the complex procedural history of this matter and state court proceedings involving the parties, the evidence will show that to consider Farmer Jaffe’s claim for actual losses separate and apart from Edwards’ claimed losses is non-sensical. Edwards was a partner in Farmer Jaffe when the Agreed Order was entered and when his former clients, the

Intervenors, settled their state court claims against Epstein. Farmer Jaffe disbanded in 2017, and Edwards is acting both as a party and as counsel for Farmer Jaffe in these show cause proceedings. Second, the evidence will show that Farmer Jaffe and Edwards are disingenuously racking up attorneys' fees for the sole reason of claiming entitlement to those fees. In other words, Farmer Jaffe and Edwards seek attorneys' fees and costs for work performed *after the CD and its contents were sealed*, and Link & Rockenbach undertook the extensive actions, listed above, to comply with the state court's rulings and protect the allegedly privileged documents from further dissemination. Thus, the evidence will show that Farmer Jaffe's and Edwards' claim that attorneys' fees or costs were incurred for the sake of enforcing Epstein's compliance lacks merit. For these reasons too, their request for a daily sanction is illogical: Epstein is and remains in compliance. Third, neither Edwards nor Farmer Jaffe will provide evidence that they have paid their respective counsel any attorneys' fees or costs—nor can they because they are working on contingency fee bases.

The Intervenors were directed by the Court to file a summary of their damages but, failed to list any actual damages they have suffered. The evidence will show that the \$25,000 claimed per Intervenor is arbitrary, and not caused in any way by Epstein's alleged violation of the Agreed Order. Concerning Intervenors' claim for attorneys' fees, costs and expenses, Intervenors' counsel has stated numerous times that he is working on this matter pro bono. Moreover, the evidence will show that as in the case of Farmer Jaffe and Edwards, that any such expenditures of time or expenses by Intervenors were caused solely by their own conduct. The requests for an Order to Show Cause all occurred after Epstein voluntarily agreed to seal the CD, and took the numerous steps to protect the allegedly privileged information described above. To the extent any attorneys' fees or costs have been incurred, the evidence will show that this is a classic example of having

generated attorneys' fees purely for the sake of trying to collect those attorneys' fees. Where Farmer Jaffe, Edwards and the Intervenor have filed a barrage of baseless motions for sanctions and contempt, the Court should not permit them to claim as damages the costs of filing those very baseless motions. The evidence will show that no attorneys' fees, costs, or expenses were incurred to actually enforce the Agreed Order.

In sum, the evidence will show that Farmer Jaffe, Edwards and the Intervenor have sustained no actual losses, and that their request for sanctions against Epstein is made solely to try to punish him and to gain a tactical advantage in the state court proceeding—not to seek compensation for any genuine, actual damages. Accordingly, at the conclusion of the show cause proceeding, based on the evidence, Epstein will respectfully request that the Court discharge the Order to Show Cause and deny all claims for relief by Farmer Jaffe, Edwards and the Intervenor because Epstein never violated the Order.

CONCLUSION

The evidence in the instant show cause proceeding will show that Epstein never violated the Agreed Order and that, accordingly, there is no factual or legal basis to hold Epstein in civil contempt. The evidence will also show that there is no sanction that could coerce Epstein into compliance, because the CD has been sealed and there is nothing for him to comply with. The evidence will also show that neither Farmer Jaffe, Edwards nor the Intervenor have incurred any actual, compensatory damages and that, while this Court has the authority to enforce its orders, their maintenance of this show cause proceeding under the circumstances is not for the purpose of protecting their privileged information, but is intended solely to seek to harass and punish Epstein.

WHEREFORE, Jeffrey Epstein respectfully requests that this Court discharge its Order to Show Cause, deny Movants' request for Epstein to be held in contempt of court, and to deny Movants' requests for sanctions and any other relief.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on August __, 2018, a true and correct copy of the foregoing was served electronically to all registered users on the CM/ECF system, which includes counsel identified on the service list below.

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CHAD P. PUGATCH (FBN [redacted])
[redacted]

- AND -

I hereby certify that I am admitted to the Bar of the United States District Court for the Southern District of Florida and I am in compliance with the additional qualifications to practice in this Court set forth in Local Rule 2090-1(A).

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