

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

FT. LAUDERDALE DIVISION

Case No. 08-CIV-80893-MARRA/JOHNSON

JANE DOE,

Plaintiff,

v.

JEFFREY EPSTEIN,

Defendant.

**DEFENDANT, JEFFREY EPSTEIN'S
MOTION FOR PROTECTIVE
ORDER AND OBJECTION TO
DISCLOSURE OF CERTAIN
DOCUMENTS WITH INTEGRATED
MEMORANDUM OF LAW**

Defendant, Jeffrey Epstein ("Epstein"), by and through his undersigned counsel and pursuant to a Joint Stipulation Regarding Certain Documentation files this his Motion for Protective Order and Objection to Disclosure of Certain Correspondence and Discovery for the reasons set forth below:

I. PRELIMINARY STATEMENT

During the underlying litigation, Epstein vigorously sought protection from the Court that these and other documents produced would be used for purposes other than those contemplated by the Federal Rules of Civil Procedure for discovery; i.e., dissemination in the media. His rights to contest this type of use were preserved as part of the settlement of these proceedings, which provided for confidentiality of the settlement as well as provisions to bring these matters to a close. Now, the fears that led to Epstein's efforts to seek protection from the court have now come to pass. The intended use of these documents is now leading to more litigation that the settlement of these cases was designed to end. Epstein requests that the court grant protection so that this does not occur.

Natalie A. Trompet

From: Jacqueline M. Borrero
Sent: Thursday, September 02, 2010 4:45 PM
To: Natalie A. Trompet
Subject: LAS login

CM/ECF SDFL (LAS)

user: [REDACTED]
pass: [REDACTED]

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II. STATEMENT OF PROCEEDINGS

1. In July 2010, the Defendant, pursuant to certain discovery orders (D.E. 462 and 572) entered by this court produced correspondence and documentation between Epstein's attorneys/agents and federal prosecutors ("Correspondence").

2. Shortly thereafter, the parties entered into settlement agreements in the above-styled matter and in matters of [REDACTED] v. *Epstein*, Case No. 502008 CA028051 XXXXMB AB in the Fifteenth Judicial Circuit in and for Palm Beach County and in [REDACTED] vs. *Epstein*, Case No. 502008 CA028058 XXXXMB AB, filed in the Fifteenth Judicial Circuit in and for Palm Beach County, Florida.

3. The parties entered into a Joint Stipulation, a copy of which is attached hereto as Exhibit "1" to govern the use of public disclosure of discovery of the Correspondence. The Court reserved jurisdiction to enforce the Stipulation.

4. On August 26, 2010, counsel for the Plaintiff served notice of its intent to use the Correspondence in two court proceedings, an internal Justice Department Complaint procedure, and other, essentially public matters. It is also anticipated that the documents will be released to the media. A copy of the Notice of Intent to Use is attached hereto as Exhibit "2".

5. The Joint Stipulation provides that if Epstein chooses to serve an objection, the Correspondence will remain confidential until the court has had an adequate opportunity to review the materials and enter a ruling.

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6. On August 30, 2010, the undersigned's firm requested counsel for the Plaintiff to identify the documents they intend to use so that Epstein would be in a position to prepare an appropriate response, which was rejected. The undersigned's law firm understands that the correspondence in question is in excess of 100 documents. In general, the documents consist of communications between Mr. Epstein's defense counsel and the United States Attorney's Office regarding the investigation, negotiation and settlement of potential criminal charges against Mr. Epstein.

III. DESCRIPTION OF INTENDED USE

Epstein respectfully submits that a brief description of the proceedings that counsel for the Plaintiff has stated that they intend to use the Correspondence will be helpful to the court:

A. *Epstein v. Edwards*, Case No. 502009 CA040800XXXXMB AG

The Plaintiff Epstein commenced an action on December 7, 2009 seeking damages against Defendants, Scott Rothstein, Bradley J. Edwards, and LM,¹ based on an alleged illegal Ponzi scheme by the Defendants, and the Plaintiff believes others as well, to market investments to outside investors in lawsuits brought against Epstein by a number of Plaintiffs, represented by the now defunct Law Firm of Rothstein, Rosenfeldt & Adler, P.A. ("RRA"). Some of the lawsuits were transferred to a newly formed firm of Farmer, Jaffe, Weissing, Edwards, Fistos & Lehrman, PL ("Farmer Jaffe"). Epstein has alleged and believes that the Defendants and perhaps other former employees of RRA conspired to use the Epstein/LM litigation before this court and perhaps other

¹ The claim against LM was dismissed pursuant to a settlement agreement.

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litigation to lure investors in to making approximately \$13 million dollars worth of investments into phoney settlements by using pending real cases.

Counsel for those investors, William Scherer, whose is also a member of the Creditor's Committee in the RRA bankruptcy, represented to the bankruptcy court that a number of his clients and their lawyer went into the RRA conference room and were allowed to go through the LM case file boxes, approximately 10 of them, and concluded that the Epstein case was a real case and ultimately invested money. A copy of the transcript of this hearing is attached hereto as Exhibit "3". Mr. Scherer's remarks appear on pages 17-22.²

On August 13, 2010, Bankruptcy Judge Raymond Ray ordered in response to a subpoena from Epstein the appointment of a special master to review in excess of 6,000 electronically stored documents of RRA that relate to Epstein and other litigation to prepare a privilege log in anticipation of production of relevant non-privileged documents. A copy of that Order is attached hereto as Exhibit "4".

B. In Re: Jane Doe, Case No. 08-80736-Marra/Johnson

In 2008, Jane Doe filed an action under the Crime Victims Rights Act ("CVRA"), 18 U.S. Code § 3771 on behalf of two alleged victims of the alleged sexual assault by Epstein. Since 2008 there has been little if any activity on that file. The articulated purpose of the use of these documents is in an effort to set aside the "Non Prosecution Agreement" which Epstein entered into

²It is difficult to believe that if what Mr. Scherer has stated is true, that Mr. Edwards was not aware that his case files were being shown to outside investors.

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with the federal government. Neither victim has met the requirements of 18 U.S. Code § 3771(d)(5)(A-C), which requires the court to assert her rights before and during the proceeding and to petition the court of appeals for a writ of mandamus if such right is denied. (See: Docket Entries for *Doe v. U.S.*, 9:08-80736-KAM). It is hard to believe that a case that has been languishing in excess of two years will be revived to invalidate an agreement that the U.S. Attorneys Office entered into with Epstein after the agreement has been fully performed.

C. Justice Department Ombudsman and other uses

The Code of Federal Regulations has set out the procedures to promote compliance with crime victims' rights. 28 C.F.R. § 45.10. In order to take advantage of this complaint process, the Code of Federal Regulations requires that complaints must be submitted within ninety (90) days of the victim's knowledge of a violation, but not more than one (1) year after the actual violation. 28 C.F.R. § 45.10(c)(3).

It is obvious from the inaction of these proceedings and earlier filed pleading that this time frame has expired. Therefore the articulated intended use of the documents in this complaint proceeding is suspect on its face, thus leaving the only other articulated purposes which essentially is to allow the documents to go into the public domain.

IV. MEMORANDUM OF LAW

The policies behind FRE 408, and 410 provide this court for basis of sustaining Epstein's objections to the production of these documents. The intended use contravenes a critical public policy of encouraging resolution of criminal prosecutions without trial. Defendants are considerably

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more likely to engage in full and frank discussions with the government if they do not fear that statements they or their counsel make to government prosecutors will be used against them to their detriment in other proceedings. More specifically, Rule 408 prohibits the use of any evidence offered to prove liability for, invalidity of, or the amount of any claim that was disputed. Rule 410 makes inadmissible pleas, plea discussions and related statements. The exceptions under each of these rules do not apply.

Evidence of statements made during plea negotiations are also not admissible under Florida Rules of Criminal Procedure 3.172(i). They are not admissible in any civil or criminal proceeding against the person who made the plea or offer or who conducted the negotiations. Similar provisions in Florida Evidence Code exist. Statements made as part of settlement negotiations are inadmissible. The exception under each of these rules also do not apply. *See*: §§ 90.408 and 90.410, Fla. Stat (1976).

The Florida Rule, like its Federal Rule Counterpart, was adopted to promote plea bargaining by allowing a defendant to negotiate without waiving Fifth Amendment protection. The most significant factor in the rules of adoption was the need for free and open discussion between the prosecution and defense during attempts to reach a compromise *United States v. Davis*, 617 F. 2d 677, 683 (DC Cir. 1979), cited in *Nunes v State of Florida*, 988 So. 2d 636 (Fla. 2d DCA 2008).

It would obviously present a chilling effect on any settlement discussions if such discussions could later be used as admissions of liability at trial or in any other proceeding. *Bank Card America, Inc. v. Universal Bank Card Systems, Inc.*, 203 F. 3d 477, 483 (7th Cir. 2000). One court in the

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federal court system has held that communications falling within the parameters of Rule 408 are covered by settlement privilege which insulates them not just from admission into evidence but from discovery as well. *Goodyear Tire & Rubber Company v. Chiles Power Supply, Inc.*, 332 F. 3d 976, 979-983 (6th Cir. 2003). The court specifically stated:

There exists a strong public interest in favor of secrecy of matters discussed by parties during settlement negotiations...the ability to negotiate and settle a case without trial fosters a more efficient, more cost effective, and significantly less burden to the judicial system...parties must be able to abandon their adversarial tendencies to some degree. They must be able to make hypothetical concessions, offer creative *quid pro quos*, and generally make statements that would otherwise belie their litigation efforts. *Goodyear Tire, Id.* at 980.

The same is no less true in the plea negotiation context particularly where a central component of the discussions and negotiations between counsel for Epstein and counsel for the United States Attorney was to reach an agreement on conditions relating to compensation for his alleged victims.

The court ordered discovery of this Correspondence so the Plaintiff could determine if it contained any admissible information that would advance a stand-alone federal civil action. Instead, Epstein submits that the real use of this Correspondence will be to further counsel for the Plaintiffs legislative, political and philosophical mission to expand victim rights. This kind of extrinsic use of such discovery chills and compromises the presumptive confidentiality of written and often frank discussions between counsel. Epstein intended his communications with United States Attorney's Office to be private and protected by FRE 410. The communications from the U.S.

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Attorney to Epstein's counsel reflect these discussions and were also intended to be private. Now, after the fact to allow it to be disseminated to victim's rights advocates to change legislation totally defeats the public policy consideration of encouraging the resolution of criminal prosecutions without trial.

V. RELIEF REQUESTED

Epstein requests that this Court grant the Motion for Protective Order by preventing disclosure and order Plaintiffs' counsel to return, without keeping copies, the Correspondence to counsel for Epstein.

Alternatively, there are in excess of 100 documents of Correspondence; and as noted, counsel for Plaintiff has refused to agree to designate which they intend to use. Therefore, in the event this court is inclined to order the release of said correspondence, then Epstein requests an in-camera inspection of which documents Plaintiff intends to use to determine what, if any, documents are related to the foregoing pleas and what documents are not. Along the same lines, Epstein requests an in-camera inspection in an effort to redact any information that may violate third party privacy rights or information that would implicate Epstein's Fifth Amendment rights and to further brief these issues.

VI. LOCAL RULE 7.1 STATEMENT

Pursuant to the above Rule, the undersigned counsel and Plaintiff's counsel have conferred and are unable to resolve this matter.

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VII. CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was electronically filed with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record identified on the following service list in the manner specified via transmission of Notices of Electronic Filing generated by CM/ECF on this 2nd day of September, 2010.

Brad Edwards, Esq.
Farmer, Jaffe, Weissing, Edwards, Fistos
& Lehrman, PL
423 N. Andrews Avenue
Suite 2
Fort Lauderdale, FL 33301

[REDACTED]
Fax [REDACTED]

Jack Alan Goldberger, Esq.
Atterbury Goldberger & Weiss, P.A.
250 Australian Avenue, South
Suite 1400
West Palm Beach, FL 33401-5012

[REDACTED] Fax [REDACTED]
Co-counsel for Jeffrey Epstein

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Paul G. Cassell, Esq.
Pro Hac Vice
33
2 South 1400 E, Room 101
Salt Lake City, UT 84112

[REDACTED] Fax

Co-Counsel for Plaintiff

Respectfully submitted,

/s/ Joseph L. Ackerman, Jr.

Joseph L. Ackerman, Jr.
Fla. Bar No. 235954
Lilly Ann Sanchez
Fla. Bar No. 195677

FOWLER WHITE BURNETT P.A.
901 Phillips Point West
777 South Flagler Drive
West Palm Beach, Florida 33401
Telephone: [REDACTED]
Facsimile: [REDACTED]

Co-Counsel for Defendant Jeffrey Epstein

[pat] W:\80743\MTNPRO07-Motion for Protection Order USDC Doe v Epstein.JLA(9/2/10-15:59)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

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

JANE DOE,

Plaintiff,

v.

JEFFREY EPSTEIN,

Defendants.

Joint Stipulation

Plaintiff, JANE DOE and Defendant, JEFFREY EPSTEIN ("Epstein"), hereby file their Joint Stipulation Regarding Certain Correspondence Obtained By Jane Doe's attorneys during discovery, and each state:

1. In July 2010, the law firm of Farmer, Jaffe, Weissing, Edwards, Fistos and Lehrman, PL. (the "Law Firm"), Paul G. Cassell, Esq. and Jay Howell, Esq. ("Counsel") received through discovery certain correspondence and documents (including content thereof) between Epstein's attorneys/agents and federal prosecutors (the "Correspondence").

2. Counsel for Jane Doe and Counsel for Epstein disagree whether the Correspondence is confidential.

3. Without in any way altering the obligations set forth in the Addenda to Settlement Agreements entered into in the above-styled matter and in the matters of [REDACTED] vs. Epstein, CASE NO. 502008 CA028051 XXXXMB AB and [REDACTED] vs. Epstein, CASE NO. 502008 CA028058 XXXXMB AB, Counsel may wish to use the Correspondence in pending cases of Epstein v. Rothstein, CASE NO. 502009CA040800XXXXMB AG and In Re: Jane Does 1 and 2, CASE



NO. 08-80736-CIV-MARRA/JOHNSON. If Counsel (or Mr. Edwards as a Defendant in the Epstein v. Rothstein case) desires to file, use or disclose the Correspondence or contents thereof to anyone, Counsel agrees that prior to using any of the Correspondence in these proceedings or prior to providing or making the Correspondence available to anyone else, that they will provide seven (7) days notice to Epstein's counsel (Robert D. Critton, Jr. at [REDACTED] and Michael J. Pike at [REDACTED] of their intent to use or provide the Correspondence or in the alternative, file the Correspondence under seal. If Epstein chooses to serve an objection based on a claim that the Correspondence should remain confidential, his objection must be served within seven (7) days from the date of the notice. If Epstein does serve an objection, Counsel (or Mr. Edwards as a defendant) will not file (unless filed under seal) nor disclose the Correspondence to the public or third parties until the court has ruled on the objection. However, Counsel (or Mr. Edwards as a defendant) may file the Correspondence under seal or provide the Correspondence to the court for an in camera inspection if any objection is made such that the court is in a position to rule on the objection.

WHEREFORE, Plaintiff and Defendant requests that the Court enter an order on the above stipulation and grant any additional relief the Court deems just and proper.

Local Rule 7.1 Statement

Pursuant to the above rule, the undersigned counsel and Plaintiff's counsel have conferred and have agreed to same.

Respectfully submitted,

By: /s/ Robert D. Critton, Jr.
ROBERT D. CRITTON, JR., ESQ.
Florida Bar No. 224162

Certificate of Service

I HEREBY CERTIFY that a true copy of the foregoing was electronically filed with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record identified on the following service list in the manner specified via transmission of Notices of Electronic Filing generated by CM/ECF on this 19th day of July, 2010:

Brad Edwards, Esq.
Farmer, Jaffe, Weissing, Edwards, Fistos
& Lehrman, PL
425 N. Andrews Ave.
Suite #2
Fort Lauderdale, FL 33301
Phone: [REDACTED]
Fax: [REDACTED]

Paul G. Cassell, Esq.
Pro Hac Vice
332 South 1400 E, Room 101
Salt Lake City, UT 84112
[REDACTED] Fax
Co-counsel for Plaintiff

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

By: /s/ Robert D. Critton, Jr.
ROBERT D. CRITTON, JR., ESQ.
Florida Bar No. 224162
rcrit@bcclaw.com
MICHAEL J. PIKE, ESQ.
Florida Bar #617296
mjpike@bcclaw.com
BURMAN, CRITTON, LUTTIER & COLEMAN, LLP
303 Banyan Boulevard, Suite 400
West Palm Beach, FL 33401
[REDACTED] Phone
[REDACTED] Fax
(Co-Counsel for Defendant Jeffrey Epstein)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

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

JANE DOE,

Plaintiff,

v.

JEFFREY EPSTEIN,

Defendants.

Order Adopting and Entering Joint Stipulation

This matter came before the Court on Plaintiff, Jane Doe, and Defendant, Jeffrey Epstein's Joint Stipulation, and counsel being in agreement with the entry of the Stipulation, it is HEREBY ORDERED and ADJUDGED that:

1. The Joint Stipulation is hereby Adopted and Entered.
2. Without in any way altering the obligations set forth in the Addenda to Settlement Agreements entered into in the above-styled matter and in the matters of [REDACTED] vs. Epstein, CASE NO. 502008 CA028051 XXXXMB AB and [REDACTED] vs. Epstein, CASE NO. 502008 CA028058 XXXXMB AB, Counsel may wish to use the Correspondence in pending cases of Epstein v. Rothstein, CASE NO. 502009CA040800XXXXMB AG and In Re: Jane Does 1 and 2, CASE NO. 08-80736-CIV-MARRA/JOHNSON. If Counsel (or Mr. Edwards as a Defendant in the Epstein v. Rothstein case) desires to file, use or disclose the Correspondence or contents thereof to anyone, Counsel agrees that prior to using any of the Correspondence in these proceedings or prior to providing or making the Correspondence available to anyone else, that they will provide seven (7) days notice to

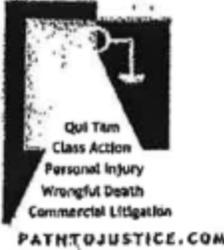
Epstein's counsel (Robert D. Critton, Jr. at [REDACTED] and Michael J. Pike at [REDACTED]) of their intent to use or provide the Correspondence or in the alternative, file the Correspondence under seal.

3. If Epstein chooses to serve an objection based on a claim that the Correspondence should remain confidential, his objection must be served within seven (7) days from the date of the notice. If Epstein does serve an objection, Counsel (or Mr. Edwards as a defendant) will not file (unless filed under seal) nor disclose the Correspondence to the public or third parties until the court has ruled on the objection. However, Counsel (or Mr. Edwards as a defendant) may file the Correspondence under seal or provide the Correspondence to the court for an in camera inspection if any objection is made such that the court is in a position to rule on the objection.

DONE and ORDERED this _____ day of _____, 2010.

Linnea R. Johnson
United States Magistrate Judge

Courtesy Copies: Judge Kenneth Marra
Counsel of Record



Farmer, Jaffe, Weissing, Edwards, Fistos & Lehrman, P.L.

August 26, 2010

Robert D. Critton, Jr., Esq.
BURMAN, CRITTON, et al.
303 Banyan Boulevard
Suite 400
West Palm Beach, Florida 33401

Dear Mr. Critton,

We are writing to advise you of our intention to use in two pending court cases and a Justice Department complaint process correspondence between Epstein's representatives and federal prosecutors. As we have indicated to you in the past, we do not believe that we are under any restrictions with regard to using these materials in filed court cases and are not aware of any court order restricting our use of this correspondence. You have not directed us to any such court order. Nonetheless, you apparently believe that some sort of restriction exists. Accordingly, we have agreed to give you notice of our intention to use the correspondence so that you can, if you so choose, file an objection.

As you know, Epstein recently chose to settle the lawsuit of Doe v. Epstein, Case No. 08-CV-80893-CIV-MARRA/JOHNSON, shortly before trial. The settlement he reached followed a few days after he provided to us, as Jane Doe's legal counsel, correspondence between his representatives and the U.S. Attorney's Office in connection with a federal prosecution related to sex offenses against minors that the U.S. Attorney's Office was conducting. That correspondence demonstrates that Epstein was prepared to plead guilty to sexually abusing children.

As you also know, Epstein has chosen to file a lawsuit against one of us (Brad Edwards, Esq.) in which he alleges that civil lawsuits against him for sexually abusing children were trumped up as some sort of a scheme to extort money from him. As you also know, Epstein took the 5th during his deposition on all relevant questions rather than providing supporting responses for his lawsuit.

Finally, as you know, there is currently pending before Judge Marra a case filed under the Crime Victims' Rights Act (CVRA), 18 U.S.C. § 3771, in which two victims of sexual assault by

425 North Andrews Avenue, Suite 2, Fort Lauderdale, Florida 33301
office fax



Robert D. Critton, Jr., Esq.
August 26, 2010
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Epstein allege they were deprived of their rights under the Act. For example, the victims allege that there were deprived of notice of pending plea bargain arrangements and an opportunity to be heard as well as the right to meaningfully confer with prosecutors. The correspondence provided to us is compelling evidence in support of their claims, as it demonstrates that federal prosecutors were conducting plea discussions with Epstein months before they alerted the victims to any possible plea bargain. The correspondence also demonstrates a willful plan to keep the victims in the dark about the plea discussions.

In light of these facts, we intend to make use of this correspondence in the two lawsuits mentioned above. Of course, because of the redaction you made to the documents (and we challenged and firmly believe was a clear violation of Judge Marra's Order), no actual statements from Epstein's representatives are disclosed in the documents - only statements from federal prosecutors.

Our currently planned use includes the following:

Epstein v. Edwards

Mr. Jack Scarola, Esq., will file a motion for summary judgment on Epstein's meritless lawsuit against Brad Edwards, Esq., as well as pursuing Edwards' counterclaim for abuse of process. To demonstrate that Epstein knew that he was guilty of the crime of sexually abusing children, he intends to attach relevant parts of the correspondence as exhibits to our motion for summary judgment and various motions pursuing the counterclaim. Mr. Scarola, as Edwards' counsel and someone with whom Edwards has an attorney client relationship and privilege, received the documents in question before the settlement agreement was reached and is not a party to the settlement agreement. Nonetheless, out of an abundance of caution, we are giving you notice of his upcoming additional intended use of the documents.

In Re: Jane Doe, Case No. 08-80736-MARRA/JOHNSON

Now that the civil cases have been favorably resolved, we will shortly be filing additional pleadings in the CVRA case. These pleadings will ask for remedies to protect the victims' rights under the CVRA, as well as the invalidating of the non-prosecution agreement that the U.S. Attorney's Office entered with Epstein in violation of the CVRA.

Related to these efforts to secure relief under the CVRA, we will be seeking to have a legislative initiative made to modify the CVRA so that it better protects victims of sexual abuse and other serious crimes. As part of that effort, we intend to share the correspondence with Susan Howley, Legislative Director for the National Center for Victims of Crime, who is currently in discussions with legislative aides to Senator Leahy about modifications to the CVRA. We further intend to share the correspondence with Meg Garvin, Executive Director of the National Crime Victims Law Institute in Portland, Oregon. As you may know, Ms. Garvin worked with the victims in the CVRA matter early on. Ms. Garvin is also in contact with congressional staff about the need for modifications to the CVRA. She has also been in discussions with the General Accounting Office (GAO), which issued a report about the effectiveness of the CVRA. See GAO, Increasing Awareness, Modifying the Compliant Process,

425 North Andrews Avenue, Suite 2, Fort Lauderdale, Florida 33301
office [REDACTED] fax [REDACTED]

Robert D. Critton, Jr., Esq.
August 26, 2010
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and Enhancing Compliance Monitoring with Improve Implementation of the Act (Dec. 2008). The GAO is continuing to monitor compliance with the Act, and we intend to ask Ms. Garvin to share the correspondence with the GAO.

As you may know, in the past crime victims groups have succeeded in changing victim's rights' laws and then having those changes applied to currently pending cases. See, e.g., Paul G. Cassell, *Barbarians at the Gates? A Reply to the Critics of the Victims' Rights Amendment*, 1999 Utah L. Rev. 479, 518-19 (discussing remedial legislation passed by Congress to protect victims of the Oklahoma City bombing which Congress intended to apply to pending trials).

Justice Department Ombudsman

The Justice Department also has a process for considering complaints by crime victims about their treatment in the criminal justice process. They have an ombudsman, who will consider specific complaints. We intend to file a complaint with the Ombudsman about the handling of this case, and in doing so plan to share our documents with the Ombudsman and seek advice from other attorneys who work in the legal clinics for the National Crime Victims Law Institute about how to most effectively file such a complaint.

The uses listed above are examples and are not intended to be exclusive descriptions of our intention to use these documents in judicial and legislative fora.

Unless we hear from you within seven days that you have initiated legal action to bar us from making the above-described uses of the correspondence, we will move forward with doing so.

Sincerely,



Steven R. Jaffe

SRJ/nas

425 North Andrews Avenue, Suite 2, Fort Lauderdale, Florida 33301
office [redacted] fax [redacted]

Page 1

1 UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA

2
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4
5 CASE NO.: 09-34791-BKC-RBR

6 In Re:
7 ROTHSTEIN ROSENFELDT ADLER, P.A.,
8 Debtor.

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10
11 MOTION TO COMPEL PRODUCTION OF DOCUMENTS FROM TRUSTEE
12 PURSUANT TO DOCUMENT PRODUCTION PROTOCOL ESTABLISHED
BY DEB#72 (807); AMENDED MOTION FOR PROTECTIVE ORDER
13 (819)

14 August 4, 2010

15
16 The above-entitled cause came on for
17 hearing before the HONORABLE RAYMOND B. RAY,
18 one of the Judges of the UNITED STATES BANKRUPTCY
19 COURT, in and for the SOUTHERN DISTRICT OF FLORIDA,
20 at 299 East Broward Blvd., Fort Lauderdale, Broward
21 County, Florida, on Tuesday, August 4, 2010,
22 commencing at or about 9:30 a.m., and the following
23 proceedings were had:
24 Reported By: Margaret Franzen

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1 APPEARANCES:

2 BERGER SINGERMAN, by
3 CHARLES H. LICHTMAN, ESQUIRE
4 on behalf of the Trustee

5 CONRAD & SCHERER, by
6 WILLIAM R. SCHERER, ESQUIRE
7 on behalf of victims

8 FOWLER WHITE BURNETT, by
9 RONALD G. NEIWIRTH, ESQUIRE
10 LILLY ANN SANCHEZ, ATTORNEY-AT-LAW
11 CHRISTOPHER E. KNIGHT, ESQUIRE
12 JOSEPH L. ACKERMAN, ESQUIRE
13 on behalf of Jeffrey Epstein

14 FARMER JAFFE WEISSING EDWARDS PISTOS & LEHRMAN, by
15 GARY FARMER, ESQUIRE
16 BRAD EDWARDS, ESQUIRE
17 on behalf of LM, Brad Edwards and
Farmer Jaffe Weissing Edwards Pistos & Lehman

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Page 3

1 THE COURT: Rothstein Rosenfeldt & Adler.
2 All right. May I have appearances, please?
3 MR. LICHTMAN: Good morning, Judge.
4 Chuck Lichtman, Berger Singerman, for the trustee.
5 MR. NEIWIRTH: Good morning, your Honor.
6 Ronald Neiwirth, Fowler White Burnett, on behalf of
7 the movant, Epstein, and with me today are two of my
8 partners, Chris Knight and Lilly Ann Sanchez --
9 MS. SANCHEZ: Good morning, your Honor.
10 MR. KNIGHT: Good morning, your Honor.
11 MR. NEIWIRTH: -- both of whom are more
12 familiar with the State Court angle on this than I
13 am, so they came along to be able to elucidate that
14 end of it.
15 MR. FARMER: Good morning, your Honor.
16 Gary Farmer on behalf of LM, Brad Edwards, and
17 the Farmer Jaffe Weissing law firm. We are an
18 interested party and have filed a motion for
19 protective order as to the subpoena that is at
20 issue here today.
21 THE COURT: All right. Insofar as the
22 TD Bank motion, Docket Entry 780, that has been the
23 subject matter of an agreed order that was submitted
24 to me.
25 MR. LICHTMAN: Correct, Judge.

Page 4

1 THE COURT: Mr. Scherer.
2 MR. SCHERER: Yes, sir, your Honor.
3 I'm William Scherer and I'm here on behalf of a
4 number of victims in the State Court action, as
5 well as the chairman of the creditors' committee
6 in the bankruptcy.
7 THE COURT: All right. That leaves us with
8 Docket Entry 807 and 819. 807 is Jeffrey Epstein's
9 motion.
10 MR. NEIWIRTH: Thank you, your Honor, and
11 again, good morning. We represent Jeffrey Epstein.
12 He has a civil claim pending in State Court in
13 Palm Beach County. He had served a subpoena on
14 Mr. Stettin requesting documents from the RRA estate.
15 That was back in April.
16 While this was still in process, in
17 May, under Docket Entry 572, your Honor entered
18 an order standardizing procedures for obtaining
19 discovery from Mr. Stettin and the RRA estate,
20 and at least on the face of it, it takes
21 jurisdiction over all discovery efforts against
22 the trustee. That left us in a quandary.
23 We had a subpoena pending in State
24 Court. We had correspondence from Berger
25 Singerman on behalf of the trustee that they had

(Pages 1 to 4)

OUELLETTE & MAULDEN COURT REPORTERS,



<p style="text-align: right;">Page 5</p> <p>1 identified information and they were processing 2 it, including vetting for attorney/client 3 privilege issues, but then in the meantime came 4 your Honor's order on May 18th, so we had to go 5 back and reinvent the wheel and go through the 6 necessary hoops in order to comply with that. 7 In the meantime, as we sit here now, we 8 still have no production. We have a trial date 9 coming up in October, and we have a motion for 10 protective order coming from a party who's 11 already settled out, the LM party. They no 12 longer have anything directly to do with this. 13 Further, we are advised by the 14 creditors' committee that in addition to what was 15 proffered to us, that at some point in time there 16 had been something like ten boxes of records 17 pertaining to these particular issues and someone 18 on behalf of the victims had been given, or 19 several someones, had been given access to those 20 ten boxes and had viewed them, which would 21 vitiate any attorney/client privilege in any 22 event. 23 So what we are trying to do is fashion 24 a mechanism so we can comply with your order, 25 Docket 672, about standardized means of getting</p>	<p style="text-align: right;">Page 7</p> <p>1 taken jurisdiction over these discovery matters 2 and attempted to standardize discovery efforts 3 for the trustee. There's a lot of people that 4 want things from the trustee. 5 The trustee is overseeing an estate 6 which involved somewhere in excess of 70 lawyers 7 and lots of cases and lots of problems, and 8 literally millions of documents, and we have 9 absolutely no problem with the standardized 10 order, but that means that somehow or other we 11 have to be able to deal with it in a standardized 12 manner, instead of Mr. Farmer's suggestion, which 13 is go back to State Court and deal with it over 14 there. 15 THE COURT: What is the status of the State 16 Court proceeding? 17 MR. NEIWIRTH: May I defer to my partner, 18 who is more familiar with that? 19 MR. KNIGHT: Your Honor, Christopher 20 Knight, if I may? While we were waiting for the 21 documents from the Stettin office, we obviously 22 wanted to go down two tracks because we had an 23 October trial date. The status of it is we could not 24 come to an agreement with the other side. 25 Mr. Ackerman was at the last hearing, in which the</p>
<p style="text-align: right;">Page 6</p> <p>1 production from the trustee, allow for the 2 appropriate vetting of the materials for 3 attorney/client privilege, and we must bear in 4 mind that this is one objector, there's a lot 5 more documents than that. 6 To the best of our knowledge, the 7 documents that pertain to the LM party, who is 8 settled anyway, may be 15 percent of those which 9 are responsive to the inquiry that we made of the 10 trustee, but in any event, someone has to vet 11 them for attorney/client privilege and do a 12 privilege log. 13 Now, Mr. Farmer's office on behalf of 14 LM wants to do that. We don't think that's 15 appropriate. We think the privilege at this 16 point, since the case is settled, lies with RRA 17 and, therefore, the trustee, rather than 18 Mr. Farmer and his client, because as to them the 19 case is over. 20 Furthermore, we don't think there is 21 any privilege because the boxes have been vetted 22 before and we'll hear more about that from 23 Mr. Scherer, I assume, because he was the one 24 that was aware of that. 25 And last, but not least, your Honor has</p>	<p style="text-align: right;">Page 8</p> <p>1 judge said, one, I need a representative of the 2 trustee here and two, shouldn't this be back before 3 you, Judge Ray. 4 THE COURT: You can't proceed against 5 Rothstein in the State Court, they're here. 6 MR. KNIGHT: And that is the same thing I 7 think Judge Crow recognized, and that's why we're 8 back here, and that's why we had to file the motion. 9 MR. ACKERMAN: The claim against 10 Rothstein is against him individually, and it's 11 against Brad Edwards individually, and it was 12 against one of the claimants, LM individually. 13 THE COURT: So it's not against the debtor 14 estate. 15 MR. ACKERMAN: That's correct. 16 MR. KNIGHT: Just to go a little further on 17 what Mr. Neiwirth was saying. Out of these documents 18 we've been asking for for a long time, very few of 19 them would even have privilege on their face because 20 they have nothing to do with the clients that were 21 represented, what's been called as LM. 22 If there's going to be a log, if 23 there's any need, which I don't think there is 24 because I think privilege has been waived, it 25 needs to be a log put together by the trustee,</p>

<p style="text-align: right;">Page 9</p> <p>1 not anybody else that has some sort of interest 2 in it. 3 If there's a problem with payment for 4 those, et cetera, our client has already offered 5 to the trustee, to Mr. Lichtman, we will pay for 6 it, whether it's a special master or whether it's 7 a contract attorney, if they need to do that, but 8 I don't think we even need to reach that. 9 I think these documents are long 10 overdue. They have been produced to others, they 11 have been used in depositions for others, they 12 are out there, and I think the privilege issue is 13 just being used as a smoke screen to keep our 14 client from being able to get the documents he 15 needs to be able to prove his case. 16 Thank you. 17 MR. ACKERMAN: Your Honor, one other 18 matter. Judge Crow expressed a concern about 19 entering any order against the trustee or his 20 counsel without them being present. 21 Initially we had filed a motion to 22 compel in the State Court, but we didn't realize 23 at the time or it was unclear, because we had 24 just taken over the case from another law firm, 25 that the Court had entered its order.</p>	<p style="text-align: right;">Page 11</p> <p>1 everybody first. 2 MR. KNIGHT: Okay. 3 MR. FARMER: Thank you, your Honor, may it 4 please the Court. Again, Gary Farmer on behalf of 5 the interested party, LM, also on behalf of 6 Brad Edwards and I'm sorry, your Honor, Mr. Edwards 7 is here with me. I neglected to introduce him to the 8 Court earlier. 9 MR. EDWARDS: Good morning, your Honor. 10 MR. FARMER: There has been a lot of 11 discussion here about your Honor's standardized 12 production order and I think that you need to 13 understand that this particular matter, which is 14 before you today, is anything but standard or common 15 to the matters before this Court. 16 You need to understand the nature of 17 the case. Jeffrey Epstein is an admitted 18 convicted pedophile. He sexually assaulted 19 dozens and dozens of young girls under the age of 20 15. He pled guilty to this and he has settled 21 every civil lawsuit filed against him on this 22 issue. 23 Despite all of this, Mr. Epstein has 24 seen fit to file a lawsuit against LM, who is one 25 of the plaintiffs against him; against</p>
<p style="text-align: right;">Page 10</p> <p>1 There was some discussion prior to the 2 hearing and when we went to the hearing, it was 3 clear that there was no agreement that had 4 existed and Judge Crow said, I'm not entering an 5 order, I'm not doing anything on this motion 6 until the bankruptcy trustee is represented. 7 He was concerned because this Court's 8 order had set up the standardized procedure for 9 dealing with these arguments and had reserved 10 jurisdiction relating to any subpoena or request 11 for documents from the trustee, so that's why 12 we're here now. 13 THE COURT: All right. 14 MR. KNIGHT: Your Honor, just one other 15 point. We tried to work, and we've been working with 16 Mr. Lichtman, tried to work out a protective order 17 between the trustee and Epstein regarding the 18 subpoena. Mr. Lichtman and Ms. Sanchez agreed to 19 language on it. I have a copy of it. 20 Mr. Farmer, with his motion for 21 protective order, would not agree to that, but if 22 the Court would like to have a copy of what the 23 draft was, I will approach your clerk, but if you 24 do not want that, I also -- 25 THE COURT: Well, let me hear from</p>	<p style="text-align: right;">Page 12</p> <p>1 Brad Edwards, LM's attorney; and against 2 Mr. Rothstein. 3 Now, Edwards, myself, and all the 4 members of our firm were RRA attorneys when 5 Mr. Rothstein took his ill-fated trip to Morocco 6 and did the things which are now so well known, 7 but the fact of the matter is that this discovery 8 request is a blatant attempt to obtain clearly 9 privileged documents related to the 10 representation of LM and many other victims, by 11 the way. 12 And if I can show your Honor a copy of 13 the subpoena itself, I don't think that the 14 breadth of the subpoena has been adequately 15 represented to the Court. If you peruse this, 16 you will see they are asking for communications 17 with private investigators, they're asking for 18 contingency fee contracts, they're asking for 19 every communication between any member of the 20 firm, and they throw Rothstein in just to make it 21 sexy, about these cases. 22 Now, your Honor, clearly communication 23 about the representation of a client falls under 24 not only the work product, but if the client is 25 involved in the communication, also the</p>

3 (Pages 9 to 12)

<p style="text-align: right;">Page 13</p> <p>1 attorney/client privilege. 2 Now, most of this stuff we've already 3 responded and said none, none, none, but for many 4 of these items, we have asserted the privilege 5 and we continue to assert the privilege. 6 Now, the only reason the trustee is 7 here — 8 THE COURT: Wait, there's been a privilege 9 asserted in the State Court proceeding? 10 MR. FARMER: Yes, sir. 11 THE COURT: And there is a privilege log 12 and the judge has made a ruling? 13 MR. FARMER: No. The dispute now really is 14 over who's going to file the privilege log and 15 respectfully, Judge, what we suggest is that the 16 trustee has been thrust into this matter simply 17 because the trustee stands in the shoes of all the 18 former attorneys at RRA, and the trustee is likewise 19 bound by the privileges that attach to the cases and 20 to the lawyers that were at the firm. 21 The trustee has repeatedly acknowledged 22 the fact that it is bound by those privileges 23 and, of course, as your Honor knows, the 24 privilege belongs to the client, not to any 25 lawyer or any law firm.</p>	<p style="text-align: right;">Page 15</p> <p>1 Mr. Scherer's clients, who have claims before 2 this Court, and hopefully they will get some form 3 of relief from the Bankruptcy Court, Epstein is 4 not seeking any bankruptcy assets. He's suing 5 Brad Edwards and LM personally, and Scott 6 Rothstein, and it's not an estate claim, it's 7 against Scott Rothstein personally. 8 So my suggestion, your Honor, is that 9 you instruct the trustee to turn this electronic 10 documentation information over to us. We will 11 file the appropriate privilege log with the 12 Circuit Court judge who is presiding over the 13 case, who is most familiar with the case, who 14 will be considering the upcoming motion for 15 summary judgment, and possibly trying the case, 16 and that way your Honor is not burdened with this 17 matter, the trustee does not incur fees and 18 expenses of having to go through all of these 19 documents, prepare a privilege log and our 20 clients and Mr. Edwards — Mr. Edwards is also a 21 party of that lawsuit. He enjoys his own 22 privilege, your Honor, over and above, or in 23 addition to, I should say, the privilege 24 possessed by our former clients and, of course, I 25 know counsel knows that the privilege extends</p>
<p style="text-align: right;">Page 14</p> <p>1 So the trustee is really kind of stuck 2 in the middle here. You've got the pedophile who 3 wants documents related to the cases he's already 4 settled and pled guilty for. Those documents, 5 the electronic documents, at least, the e-mails, 6 electronically stored information is how it's 7 referred to in the discovery request, your Honor, 8 are not in our possession, they are in the 9 possession of the trustee because the trustee 10 took the computer system. 11 So the trustee doesn't want to incur 12 the cost and expense of filing a privilege log 13 and, frankly, I don't know that the trustee has a 14 full appreciation of the nature and specific 15 facts of the cases that would enable it to 16 conduct a complete privilege log. 17 So my suggestion, your Honor, and it's 18 been rejected — I believe it's acceptable to the 19 trustee, but it's been rejected by Mr. Epstein's 20 counsel, is the trustee be removed from this 21 equation. There's no need that we come back 22 before you. 23 This case, this Epstein case, is not a 24 matter which would involve bankruptcy estate 25 assets going to Mr. Epstein. Unlike</p>	<p style="text-align: right;">Page 16</p> <p>1 beyond the litigation. 2 So although Mr. Epstein paid a ton of 3 money for this claim that is supposedly 4 frivolous, it has been settled, but the privilege 5 still extends and it remains in place. So we 6 simply want to make sure that our investigative 7 materials, our reports, other documentation 8 relating to the claims we have and have had 9 against Jeffrey Epstein are not put into the 10 hands of Jeffrey Epstein's attorneys. 11 Now, we just want the chance to review 12 these documents and prepare the privilege log and 13 the trustee is kind of stuck in the middle here, 14 Judge. Remove the trustee from the equation, let 15 us get the documents, we'll file the privilege 16 log, and then Mr. Epstein and us can go before 17 Judge Crow. He can review the privilege log, 18 review the documents in camera. 19 All that is going to be pretty time 20 consuming, but he's much more suited, a better 21 suited judge because he's more familiar with the 22 facts to engage in that inquiry. 23 THE COURT: Thank you. 24 MR. FARMER: Thank you, your Honor. 25 THE COURT: Mr. Lichtman, Mr. Scherer, your</p>

4 (Pages 13 to 16)

<p style="text-align: right;">Page 17</p> <p>1 input, please. 2 MR. LICHTMAN: I'm going to let Mr. Scherer 3 go first. 4 MR. SCHERER: I think he wants me to go 5 first. 6 THE COURT: All right. 7 MR. SCHERER: Your Honor, in November 8 we filed a lawsuit in State Court and we alleged 9 that as a part of Mr. Rothstein and the firm, and 10 the firm's employees, and maybe some of the 11 firm's attorneys, conspired to use the Epstein/LM 12 litigation in order to lure \$13.5 million worth 13 of my victims, my clients, into making 14 investments in these phony settlements. 15 And as we alleged in that State Court 16 proceeding, and we've sharpened the allegations 17 as we've amended a few times, we allege that 18 sometime in late October, that my clients were 19 invited into the Rothstein firm with 20 Mr. Rothstein, and he explained that he had a 21 litigation going in State Court with Mr. Edwards 22 representing LM, a victim of Mr. Epstein, and 23 these are kind of sensational allegations and 24 it's been printed widely. 25 And my clients, a number of them and</p>	<p style="text-align: right;">Page 19</p> <p>1 allegations in the LM case that they know were 2 not true, in order to entice my clients into 3 believing that Bill Clinton was on the airplane 4 with Mr. Epstein and these young woman and other 5 personages, I can't remember who they are, and 6 all sorts of other allegations that really were 7 not even related to the LM case. 8 And to the extent that any lawyers from 9 the RRA firm, former lawyers, made a ton of money 10 or however Mr. Farmer talked about it, we're 11 interested in that ton of money because if they 12 were involved in this scheme, this fraud, there's 13 a crime fraud exception, and in addition, I want 14 to see the ten boxes that they brought down. 15 The trustee does not have those ten 16 boxes. Those ten boxes were taken by Mr. Edwards 17 when he left the law firm, I presume. So we want 18 the ten boxes, we want all the communications and 19 we want to look through everything on behalf of 20 my State Court case, but also on behalf of the 21 creditors' committee because the creditors' 22 committee is looking to see if anybody else in 23 the firm, other than Rothstein, was involved in 24 this massive fraud that used the Epstein case. 25 The model of using an existing case and</p>
<p style="text-align: right;">Page 18</p> <p>1 their lawyer, went into the Rothstein conference 2 room and Mr. Rothstein brought down -- summoned 3 the investigators, two of them, two or three of 4 them, to bring down the Epstein file. And the 5 lawyer that my clients brought from a national 6 firm, went through the LM boxes, ten of them that 7 the investigators brought down, and concluded 8 that the Epstein case was a real case. 9 And what Mr. Rothstein did with that 10 real case, of course, is he told everybody that 11 not only did he have the LM client of 12 Mr. Edwards, that there were a number of other 13 young ladies, that was widely published in the 14 newspaper, that the firm was representing and 15 that wanted to settle with Mr. Epstein on a 16 confidential basis. 17 So he used the real case in order to 18 defraud my clients into investing into these 19 phony settlements and paid 13 and a half million 20 dollars. I believe that Mr. Rothstein and others 21 in the firm also told that story to a lot of 22 other people, and let a lot of other people 23 examine those ten boxes of the real case. 24 In addition, as we have alleged, that 25 Mr. Edwards and the firm put sensational</p>	<p style="text-align: right;">Page 20</p> <p>1 then spinning off a fraud from it is the same 2 that was perpetrated on the Morse -- in the Morse 3 situation, as has been alleged and widely 4 produced. 5 I can't conceive that Mr. Edwards and 6 the predecessor law firm would have any standing 7 to prepare privilege logs or anything else, given 8 what I just told the Court. That would be like 9 having the fox guard the hen house. That Epstein 10 case is settled, and to the extent it's the ten 11 boxes of stuff that we looked through, and I'll 12 have to get the boxes to see if the attorney who 13 looked through them, and how much time he spent 14 looking through them -- 15 THE COURT: Where are the ten boxes? 16 MR. SCHERER: That's a good question. 17 The trustee does not have the ten boxes. I 18 presume the ten boxes are residing with the 19 lawyers who took the case, Mr. Edwards and the 20 successor law firm. The trustee does not have 21 them. And then in addition, there's about 6,000 22 e-mails that the trustee has, and I bet you when 23 we look at Qtask, there's going to be a boatload 24 more. 25 My clients were also advised during</p>

5 (Pages 17 to 20)

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1 their due diligence, short due diligence to
 2 settle these cases with these young ladies --
 3 these putative young ladies who had to get the
 4 money and leave town because of whatever the
 5 stories were, that there were other members of
 6 the firm that told my clients that they, indeed,
 7 had even identified more of these victims that
 8 Mr. Rothstein didn't even know about at that
 9 time. So we know it wasn't just Mr. Rothstein
 10 spinning the tale, there were a lot of people in
 11 the firm.
 12 We've alleged almost all of this in our
 13 State Court action that we filed in November, up
 14 to where we are right now, but, your Honor, I
 15 think your Honor is going to have to deal with
 16 these issues in this court and I would urge you
 17 to have the trustee get involved and let the
 18 trustee do its job with respect to whether there
 19 are privileges that need to be protected, work
 20 product or attorney/client privileges, given
 21 what's going on, and I believe the trustee will
 22 be investigating whether the trustee wants to
 23 bring any claims on behalf of the estate by
 24 virtue of what I've just laid out for you.
 25 Thank you.

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1 THE COURT: So your lawsuit in State Court
 2 names these people as defendants?
 3 MR. SCHERER: It names Rothstein. It
 4 does not name Mr. Edwards. It just names
 5 Rothstein, not the firm, and lays out the facts
 6 and says other people in the firm. We did not
 7 name them because we want to see the documents
 8 and see whether they had involvement.
 9 But the facts that I have alleged for
 10 you, your Honor, is pretty much what I've alleged
 11 in my first through third amended complaint in
 12 State Court.
 13 THE COURT: So, in essence, your position
 14 in this matter would be to support the motion to
 15 compel and deny the motion for protective order?
 16 MR. SCHERER: Yes, sir, notwithstanding
 17 that Mr. Epstein is a convicted pedophile. I
 18 want to put that on the record. You know, he's
 19 served his time and whatever, but I support the
 20 same position that he -- that he has asked the
 21 Court, and that is to have the trustee deal with
 22 this, get these documents and deal with it with
 23 you, rather than allow the successor law firm to
 24 have them.
 25 I don't know where they had the right

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1 to take those ten boxes to start with.
 2 THE COURT: All right. Mr. Lichtman.
 3 MR. LICHTMAN: Good morning, Judge. I'm
 4 going to try to walk you through sort of
 5 chronologically the trustee's perspective of what has
 6 happened here. I think that what I've heard from all
 7 the parties are comments that are correct, and not
 8 necessarily correct, and I'm not suggesting
 9 falsehoods. We just have kind of a different
 10 perspective of some things and there are some points
 11 that ought to be corrected.
 12 Mr. Stettin received a subpoena in a
 13 Palm Beach State Court action for production of
 14 documents, and as we had done in virtually every
 15 subpoena, we went to our forensic accountants,
 16 the Berkowitz Dick Pollack & Brant firm, and
 17 said, okay, we need to produce e-mails and we
 18 need to also then, with the staff that we have at
 19 Berger Singerman and elsewhere, and look to see
 20 if there are any hard documents that we can find,
 21 notwithstanding what we'll call the issues as to
 22 the RRA hard drive that contain client files.
 23 We quickly realized that this is a
 24 claim different than all of the other subpoenas.
 25 The subpoenas that we had been receiving from

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1 virtually every other party in the case were
 2 requests for production of documents related to
 3 claims that those moving parties or requesting
 4 parties would have as it pertains to them trying
 5 to recover some aspect of money as pertained to
 6 the Ponzi scheme.
 7 Okay. Like Mr. Scherer, who said I
 8 need a bunch of documents, can you help us? So
 9 we would enter into, on a one by one basis, a
 10 protective order that was very, very tightly
 11 negotiated. There is no standard form protective
 12 order in this case, contrary to what everybody
 13 has told you. We have a form that we use, and
 14 everybody that has come to us, we said, we need
 15 to have a protective order in place --
 16 THE COURT: We have Docket Entry 672, which
 17 apparently is the document production protocol.
 18 MR. LICHTMAN: We have that, yes, but then
 19 we also, as an example, Document 685, have a
 20 protective order that was entered with Mr. Scherer's
 21 clients. We have, as an example, Document 715 that
 22 pertains to MS Capital, and on and on.
 23 So, in any event, what we realized is
 24 the case with respect to the Epstein vs. Scott
 25 Rothstein, Bradley Edwards case, is this is

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1 different. This is not an asset either to the
 2 RRA estate, nor is it really an asset to any
 3 potential creditor of the RRA estate that is
 4 investigating claims that can bring a recovery
 5 that can help in terms of the overall dollars
 6 into either RRA or to a particular creditor on
 7 their individual lawsuits.
 8 The Epstein case, rather, is a lawsuit
 9 between a third party that was being sued by the
 10 Rothstein firm against Rothstein lawyers, and we
 11 had a different privilege issue than we had
 12 focused on with all these other document
 13 productions.
 14 So we get the 6,000 e-mails, and on the
 15 eve of one of my colleagues getting ready to
 16 enter into -- either enter into one of these
 17 protective orders or say, here, take them, like
 18 we've done with everybody else, we looked up and
 19 Mr. Stettin and I said, time out. We have a
 20 legitimate privilege issue here.
 21 And I want to be clear, we don't want
 22 to come anywhere close to stepping in the mess of
 23 waiving attorney/client privilege, unless and
 24 until the Court tells us to, and I want to also
 25 be clear, we wish we weren't here. We would

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1 prefer not to have a fight on any of this stuff
 2 and on one hand, we don't care who does the
 3 privilege log and who gets the documents, and on
 4 the other hand, because of some things that
 5 Mr. Scherer just commented on, that I learned
 6 literally today, and because of the common
 7 interest agreement that everybody knows we have
 8 with Mr. Scherer and the committee, in some
 9 respects, I don't think it prudent for me to
 10 discuss why I would want to look at some of those
 11 documents.
 12 But be that as it may, we found that
 13 there were 6,000 e-mails and this was the one
 14 time that rather than go through the usual
 15 protocol of preparing the stipulated protective
 16 order that is effectively a mirror image of that
 17 which is provided by Federal Rule of Evidence
 18 502, we said there is a need for a real privilege
 19 log here.
 20 There are 6,000 e-mails, give or take,
 21 and we quickly assessed that the time to review
 22 6,000 e-mails, this could not be done by a
 23 paralegal, it would have to be done by a lawyer.
 24 THE COURT: Does this include Qtask or is
 25 this in addition to?

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1 MR. LICHTMAN: Qtask is not part of this
 2 equation as of right now. Now, it may be, and we're
 3 still trying to get that. I'm just talking about
 4 internal e-mails where we would put in a name search,
 5 give it to the Berkowitz firm and say, run an e-mail
 6 search on the following names.
 7 And when we realized the volume of
 8 work, and you can imagine, you know, like from a
 9 ream of paper, 500 sheets of paper, and you
 10 multiply that out and you get to 12 reams of that
 11 paper, it takes up a lot of paper, it takes up a
 12 tremendous amount of time. This is not an asset
 13 of the estate that we can, if we have to, warrant
 14 doing the work, the hard work, as we've done on
 15 many of the other claims, some of which already
 16 are before you for settlement purposes. This is
 17 a liability to the estate and an expensive one.
 18 So we really didn't want to go through
 19 the undertaking of having to protect the
 20 privilege, though we would, and candidly,
 21 Epstein's counsel has said we'll pay you to do
 22 it, but then there's also the manpower issue
 23 because we are pressed very hard to get certain
 24 adversaries moving as quickly as we can and we're
 25 fighting a lot of battles on a lot of different

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1 grounds, we still really don't want to do that,
 2 and also because we don't know the Epstein case
 3 well enough to be able to assess what is
 4 privileged, what is not, and preparing a
 5 privilege log the proper way is really a time
 6 consuming mess.
 7 So I tied it up for both sides and
 8 said, here's what I'm willing to do. Putting
 9 aside the issue as to really whether or not the
 10 Court does have jurisdiction on a State Court
 11 subpoena, which ultimately I leave to you, we
 12 said, we're still willing to enter into a
 13 modified version of the protective order that we
 14 gave to you, which effectively provides the
 15 additional language of no claims can be brought
 16 against Mr. Stettin or the estate if we produce
 17 these documents.
 18 We don't really have a bone to pick in
 19 this mess, we just want to make sure that we
 20 follow all of the ethical boundaries required by
 21 Florida law, by rules of professional conduct.
 22 We don't wish to necessarily waive somebody
 23 else's privilege. We don't think that's
 24 necessarily prudent, but we really don't want to
 25 have a fight in this battle, and we wanted the

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1 Court to approve -- whatever it is you want us to
 2 do, to tell you the truth, we're happy to do. We
 3 just want to make sure that Mr. Stettin is
 4 personally insulated and that the estate is
 5 insulated in whatever it is --
 6 THE COURT: All I see is --
 7 MR. LICHTMAN: -- you direct.
 8 THE COURT: -- the potential of a claim
 9 against Stettin and the estate for breach of the
 10 attorney/client privilege.
 11 MR. LICHTMAN: correct.
 12 THE COURT: So the basis --
 13 MR. LICHTMAN: And hence the dilemma.
 14 THE COURT: -- for the claim is there.
 15 MR. LICHTMAN: Yeah, right, hence the
 16 dilemma.
 17 Now we come to the issue of hard
 18 documents because the e-mails are one thing, and
 19 I had a number of conversations candidly with
 20 Ms. Sanchez, where I think that we had told her
 21 originally we had heard there were, as an
 22 example, some loan files or transaction files
 23 related to Ponzl deals related to Mr. Epstein,
 24 because I remember myself even hearing that going
 25 back many, many, many months ago.

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1 Suffice it to say, that I have
 2 conducted a very thorough discussion, without
 3 waiving our internal privileges or work product,
 4 and we can't find those, and it appears as if
 5 they really did not exist, that what had occurred
 6 is that somehow Epstein was listed on a sheet for
 7 a potential deal that never closed.
 8 In terms of the ten boxes of documents,
 9 one of the functions the trustee served early on
 10 in the case was to facilitate transfers of
 11 files --
 12 THE COURT: I remember that.
 13 MR. LICHTMAN: -- from two attorneys that
 14 were handling cases. All right. I had a general
 15 understanding that most of the files were picked up
 16 by the Farmer firm because they were continuing on
 17 with that litigation, and that would have made some
 18 sense, but then we had also heard that there were
 19 some boxes that were left behind.
 20 I believe there are two boxes, I'm not
 21 positive of that, two boxes I think that we may
 22 still have, and I'm pretty sure we've sent
 23 e-mails a couple of times to the Farmer firm
 24 saying, come get your documents.
 25 Now, why would we do that? A, because

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1 they had been counsel for LM and others in
 2 litigation respecting Epstein, and that we
 3 assumed that they would have been files they
 4 would want; and B, because at the time that this
 5 matter on the subpoena came before the State
 6 Court judge, we stood outside the courtroom and
 7 here's what happened. I was effectively going to
 8 tell the State Court judge basically the same
 9 story I've told you in complete detail and say,
 10 we don't really care. We just want to make sure
 11 Mr. Stettin is protected and the estate is
 12 protected.
 13 And we had reached an agreement that
 14 day, which was we were going to turn over the
 15 boxes to Mr. Farmer's firm and we were going to
 16 give e-mails to them, and they were going to do
 17 the privilege log because that would save us a
 18 ton of time, important time, and as important, a
 19 lot of money to the estate, and we did not wish
 20 to burden the creditors of the estate with legal
 21 fees for putting together the privilege log, so
 22 it was agreed that we would do that.
 23 I, personally, reiterated the terms to
 24 all the lawyers that were standing outside the
 25 courtroom, as to what was to be reflected in a

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1 written order because I didn't want to leave it
 2 to chance as to what was agreed on.
 3 Suffice it to say, when the lawyers for
 4 Mr. Epstein and the lawyers for Mr. Edwards went
 5 back to try to reduce to writing that which was
 6 in part agreed upon outside the courtroom, they
 7 were unable to do so, and that tied up the filing
 8 of the motion before you to compel us to produce
 9 the e-mails and the documents.
 10 I wish to reiterate, I think that
 11 Mr. Scherer has shared something with me that we
 12 need to investigate and will, and I was unaware
 13 of that literally until I rode up the elevator
 14 with him this morning. And I don't wish to spend
 15 more time on it than that right now, but I take
 16 him at his word because an awful lot of what I've
 17 seen him work on so far has borne fruit.
 18 I don't care what you want us to do.
 19 All I want to know is that at the end I can walk
 20 out of court with an order that protects the
 21 estate and protects Mr. Stettin. So I have told
 22 you the story and leave it to you to fashion what
 23 remedy you think appropriate.
 24 If I can answer any questions, I'm
 25 happy to.

<p style="text-align: right;">Page 33</p> <p>1 THE COURT: Well, the trustee knows what 2 the trustee has, obviously. 3 MR. LICHTMAN: Yes. 4 THE COURT: So the trustee is capable of 5 preparing a log of what he has. 6 MR. LICHTMAN: Meaning we have the 7 following data. 8 THE COURT: Yes. 9 MR. LICHTMAN: Yes, we can do that. 10 THE COURT: Then the parties can then argue 11 whether or not that is subject to privilege. The 12 plaintiff can still get from Mr. Farmer and his 13 clients in the State Court discovery. The discovery 14 being sought here is from the trustee -- 15 MR. LICHTMAN: Correct. 16 THE COURT: -- and would be subject to the 17 trustee's responsibility for the privilege log 18 because of his potential liability. 19 MR. LICHTMAN: Yes, and I think you 20 understand, though, why if we can somehow deflect 21 that responsibility, because of the extreme amount of 22 cost and time to do that, we would be happy to do 23 that because, you know, otherwise, we submit fee 24 petitions that show a tremendous amount of time on 25 something that doesn't produce an asset to the</p>	<p style="text-align: right;">Page 35</p> <p>1 MR. FARMER: Yes, your Honor. Just very 2 briefly. I thank you for the opportunity to address 3 the Court again. I just wanted to clear something 4 up, your Honor. Understand that when this all 5 happened, there were six of us now who are partners, 6 who had dozens and dozens of on-going cases. 7 THE COURT: I remember we held hearings and 8 I authorized the trustee -- 9 MR. FARMER: And you authorized, yes. 10 THE COURT: -- to deliver the information 11 so the lawyers could continue to represent the 12 clients. 13 MR. FARMER: It just seemed to be maybe 14 suggested here today that something untoward occurred 15 as far as the removal of these boxes. These were 16 litigation files, pleadings, investigative reports, 17 all of these things. 18 So we needed to get on with those 19 cases, but I think you've heard now from the 20 trustee that this is not an asset and it is an 21 expense. I still think that we are the party who 22 should prepare this privilege log. We are most 23 familiar -- 24 THE COURT: Well, no, if I appoint a 25 special master, you will have an input into that</p>
<p style="text-align: right;">Page 34</p> <p>1 estate, just a liability. 2 THE COURT: Right. This is not an asset of 3 the estate. 4 MR. LICHTMAN: No, it's just a liability. 5 THE COURT: But could be a substantial 6 liability. 7 MR. LICHTMAN: Hence the dilemma. 8 THE COURT: Well, I can appoint a special 9 master to do it at the expense of the movant and not 10 release the information until the special master 11 reports back to me and I authorize the release. 12 What I propose to do by my authorizing 13 the release -- I'm sorry, Stettin, as trustee, to 14 release the information, I would, therefore, be 15 protecting the estate from any claims for the 16 release of that information. 17 MR. LICHTMAN: We would be happy to do 18 that, your Honor, and I note, I don't wish to speak 19 for the Epstein lawyers, they actually offered to pay 20 time for us doing that, and I said, well, you know, 21 that's part of the equation, the other part is -- 22 THE COURT: No, no, no, I can appoint a 23 special master. 24 MR. LICHTMAN: Yes. 25 THE COURT: All right. Mr. Farmer.</p>	<p style="text-align: right;">Page 36</p> <p>1 special master and you'll have an opportunity to be 2 heard before me before I authorize the release of the 3 information, because ultimately the order that's 4 going to authorize the release of the information is 5 going to provide protection to the trustee and the 6 estate. 7 MR. FARMER: And, thank you, Judge, I just 8 wanted to make sure, and I was going to request, that 9 we have an opportunity to review whatever the master 10 does and if we think they've missed a privilege or 11 are wrong in an assertion, that we have an 12 opportunity to address that. 13 THE COURT: There is going to be a hearing 14 before the information gets released. 15 MR. FARMER: Understood. Thank you, your 16 Honor. 17 THE COURT: All right. Mr. Lichtman -- 18 MR. LICHTMAN: Yes. 19 THE COURT: -- I want you to prepare the 20 order. I'm going to continue the hearing on the two 21 motions, Docket Entry 807 and 819, and I'm going to 22 have you draft an order appointing a special master, 23 the expense of which will be borne by the Epstein 24 movants. The special master will meet with both 25 sides, Epstein and Edwards, and then with the</p>

9 (Pages 33 to 36)

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1 trustee, and will prepare a privilege log, the
 2 release of which will be noticed for hearing in front
 3 of me.
 4 MR. LICHTMAN: Do I pick the special master
 5 or do you?
 6 THE COURT: You can -- if you all can -- I
 7 hate to use the word agree, but if you all can agree,
 8 that's fine. If you can't agree, give me three names
 9 to choose from.
 10 MR. LICHTMAN: Okay.
 11 THE COURT: You're going to have to check
 12 with this, quote, "special master" to make sure they
 13 have the time to review the privilege log.
 14 MR. LICHTMAN: The documents.
 15 THE COURT: And it has to be somebody that
 16 doesn't have a conflict of interest.
 17 MR. LICHTMAN: Right. Okay.
 18 THE COURT: All right. Run the order by
 19 Mr. Nelwirth and Mr. Farmer.
 20 MR. LICHTMAN: Thank you.
 21 MR. FARMER: Thank you, your Honor.
 22 MR. NELWIRTH: Your Honor, may it please
 23 the Court?
 24 THE COURT: Yes.
 25 MR. NELWIRTH: Can we say something about

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1 the time frame because as we sit here right now we
 2 still have a trial coming in October.
 3 THE COURT: Well, I understand that, but I
 4 probably have between five and 6,000 active cases
 5 right now and within the Rothstein case, I don't even
 6 know how many adversaries and contested matters are
 7 pending. I'll get to it as soon as I can.
 8 But you can proceed to obtain the
 9 information from Edwards and LM in the State
 10 Court proceeding. All I'm governing is what the
 11 trustee is going to release from the debtor
 12 estate.
 13 All right. Mr. Lichtman, see to the
 14 order.
 15 MR. EDWARDS: Thank you, your Honor.
 16 MR. FARMER: Thank you for your time, your
 17 Honor.
 18 MR. NELWIRTH: Thank you, Judge.
 19 (Thereupon, the hearing was concluded.)
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 22
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1
 2
 3
 4
 5 CERTIFICATION
 6
 7 STATE OF FLORIDA:
 8 COUNTY OF DADE:
 9
 10 I, Margaret Franzen, Shorthand Reporter
 11 and Notary Public in and for the State of Florida
 12 at Largo, do hereby certify that the foregoing
 13 proceedings were taken before me at the date and
 14 place as stated in the caption hereto on Page 1;
 15 that the foregoing computer-aided transcription is
 16 a true record of my stenographic notes taken at said
 17 proceedings.
 18 WITNESS my hand this 5th day of
 19 August, 2010.
 20
 21
 22
 23
 24
 25

Margaret Franzen
 Court Reporter and Notary Public
 in and for the State of Florida at Largo
 My Commission Expires: April 14, 2014

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ORDERED in the Southern District of Florida on August 13, 2010.

Raymond B. Ray, Judge
United States Bankruptcy Court

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
FORT LAUDERDALE DIVISION
www.flsb.uscourts.gov

IN RE:

CASE NO.: 09-34791-RBR

ROTHSTEIN ROSENFELDT ADLER, P.A.,

CHAPTER 11

Debtor.

**ORDER RESPECTING PRODUCTION OF
DOCUMENTS REGARDING JEFFREY EPSTEIN**

THIS CAUSE came before the Court for hearing on August 4, 2010 upon (i) Motion to Compel Production of Documents from Trustee Pursuant to Document Production Protocol, as established by D.E. #672 (D.B. #307); (ii) Motion for Protective Order filed by Interested Party Farmer, Jaffe, Weissing, Edwards, Fistos and Lehman, P.L. ("Farmer, Jaffe") (D.E. #818) and its related amendment (D.E. #819). The Court heard argument of all counsel present at the hearing, and being otherwise duly advised in the premises,



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DOES HEREBY ORDER:

1. The Court appoints former Broward County Circuit Judge Robert Carney as Special Master who shall work with counsel for the Trustee to obtain documents responsive to the subpoena served upon the Trustee by Jeffrey Epstein to: (i) review all electronically stored information ("ESI") and other documents in the Trustee's possession, including Qtask data for purposes of determining the applicability of the attorney/client and work product privileges that may inure to the benefit of L.M., Brad Edwards, and other current or former clients of Farmer, Jaffe; (ii) segregate any such privileged documents; and (iii) prepare a privilege log in accordance with standard practice and law.
2. Prior to engaging in this document review, the Special Master shall meet with counsel for Epstein, counsel for Farmer, Jaffe and counsel for the Trustee to hear their respective positions concerning these matters. Upon completion of the review by the Special Master, the Special Master shall prepare and file a privilege log with the Court. No documents or ESI shall be released to anyone until such time as the Special Master has notified the Court that he has concluded his review of the responsive documents and is in a position to report to the Court his findings and to obtain further instruction. Upon the filing of such notice by the Special Master, the Court shall set a continued hearing on the pending motions identified above. All legal fees and costs incurred by the Special Master shall be paid by Epstein, who has agreed to pay directly all such fees and costs.

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Submitted by:

Charles H. Lichtman, Esq.
BERGER SINGERMAN, P.A.,
350 East Las Olas Boulevard, Suite 1000
Fort Lauderdale, FL 33301

Telephone: [REDACTED]

Facsimile: [REDACTED]

[REDACTED] ingerm [REDACTED]

Copy furnished to:

Charles H. Lichtman, Esq.

(Charles H. Lichtman is directed to serve this Order to all parties of interest and to file a Certificate of Service.)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

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

JANE DOE,

Plaintiff,

v.

JEFFREY EPSTEIN,

Defendants.

Order Adopting and Entering Joint Stipulation

This matter came before the Court on Plaintiff, Jane Doe, and Defendant, Jeffrey Epstein's Joint Stipulation, and counsel being in agreement with the entry of the Stipulation, it is HEREBY ORDERED and ADJUDGED that:

1. The Joint Stipulation is hereby Adopted and Entered.
2. Without in any way altering the obligations set forth in the Addenda to Settlement Agreements entered into in the above-styled matter and in the matters of [REDACTED] vs. Epstein, CASE NO. 502008 CA028051 XXXXMB AB and [REDACTED] vs. Epstein, CASE NO. 502008 CA028058 XXXXMB AB, Counsel may wish to use the Correspondence in pending cases of Epstein v. Rothstein, CASE NO. 502009CA040800XXXXMB AG and In Re: Jane Does 1 and 2, CASE NO. 08-80736-CIV-MARRA/JOHNSON. If Counsel (or Mr. Edwards as a Defendant in the Epstein v. Rothstein case) desires to file, use or disclose the Correspondence or contents thereof to anyone, Counsel agrees that prior to using any of the Correspondence in these proceedings or prior to providing or making the Correspondence available to anyone else, that they will provide seven (7) days notice to

Epstein's counsel (Robert D. Critton, Jr. at [REDACTED] and Michael J. Pike at [REDACTED]) of their intent to use or provide the Correspondence or in the alternative, file the Correspondence under seal.

3. If Epstein chooses to serve an objection based on a claim that the Correspondence should remain confidential, his objection must be served within seven (7) days from the date of the notice. If Epstein does serve an objection, Counsel (or Mr. Edwards as a defendant) will not file (unless filed under seal) nor disclose the Correspondence to the public or third parties until the court has ruled on the objection. However, Counsel (or Mr. Edwards as a defendant) may file the Correspondence under seal or provide the Correspondence to the court for an in camera inspection if any objection is made such that the court is in a position to rule on the objection.

DONE and ORDERED this _____ day of _____, 2010.

Linnea R. Johnson
United States Magistrate Judge

Courtesy Copies: Judge Kenneth Marra
Counsel of Record