

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

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

JANE DOE NO. 2,

Plaintiff,

vs.

JEFFREY EPSTEIN,

Defendant.

Related cases:

08-80232, 08-08380, 08-80381, 08-80994,  
08-80993, 08-80811, 08-80893, 09-80469,  
09-80591, 09-80656, 09-80802, 09-81092

CONFIDENTIAL  
EYES ONLY

**DEFENDANT'S MOTION FOR RECONSIDERATION AND/OR REQUEST  
FOR RULE 4 REVIEW AND APPEAL OF PORTIONS OF THE  
MAGISTRATE'S ORDER DATED AUGUST 4, 2009 (DE 242), WITH  
INCORPORATED OBJECTIONS AND MEMORANDUM OF LAW**

Defendant, Jeffrey Epstein (hereinafter "Epstein"), by and through his undersigned attorneys, hereby files his Motion for Reconsideration and/or for Request Rule 4 Review and Appeal of Portions of the Magistrate's Order (DE 242) pursuant to Rule 60, Fed.R.Civ.P. Rule 4, Rule 4(c) and Fed. R. Civ. P. 53(e). In support, Epstein states:

**I. Procedural Background**

1. This court entered an order (DE 242) stating that Epstein must provide responses to interrogatory numbers 7, 8 and 12 (sic 11) within 10 days from the date of said order. The same ruling was made as to request for production numbers 7 and 23. See DE 242.

2. However, Epstein is submitting his motion for Reconsideration and/or Request for Rule 4 Appeal and specific objections with supporting case law only as to Interrogatory Numbers 7 and 11. Responses will be provided as to Interrogatory Number 8 and Request for Production numbers 7 and 23.

## **II. Rule 4 Appeal and Review**

3. Rule 4 provides, in pertinent part, that:

Any party may appeal from a Magistrate Judge's Order. . .[and] [s]uch party shall file with the Clerk of Court, and serve on all parties, written objections which shall specifically set forth the order, or part thereof, appealed from a concise statement of the alleged error in the Magistrate Judge's ruling, and statutory, rule, or case authority in support of the moving party's position . . . . The District Judge shall consider the appeal and shall set aside any portion of the Magistrate Judge's order found to be clearly erroneous or contrary to law. The District Judge may also reconsider sua sponte any matter determined by a magistrate Judge under this Rule.

### **a. Interrogatory Numbers 7 and 11**

4. Plaintiff served her Amended First Set of Interrogatories on Defendant and Request for Production, and Epstein served his responses thereto raising his constitutional privileges and guarantees and, in the alternative, raising specific other applicable objections. See Exhibits "A" and "B". Plaintiff filed her Motion to Compel (DE 57) Epstein filed his Response to Plaintiff's Motion to Compel Answers to Interrogatories and Responses to 1<sup>st</sup> and 2<sup>nd</sup> Production of Documents, and Incorporated Memorandum of Law. (DE 63) The arguments set forth therein are incorporated herein by reference (the "Response Memorandum") such that a concise statement of the Magistrate's error(s) relative to Interrogatory Numbers 7 and 11 may be the focus of this Motion for Reconsideration and/or Rule 4 Appeal and Review. Plaintiff filed her Reply thereto at

DE 81. Thereafter, the Magistrate-Judge entered an order on the above at DE 242 requiring, among other things, that Epstein respond to Interrogatory Numbers 7 and 11.

5. Interrogatory Numbers 7 and 11 and the Responses thereto provide:

**Interrogatory Number 7** - List all time periods during which Jeffrey Epstein was present in the State of Florida, including for each the date he arrived and the date he departed.

**Answer:** Defendant is asserting specific legal objections to the interrogatories as well as his U.S. constitutional privileges. I intend to respond to all relevant questions regarding this lawsuit, however, my attorneys have counseled me that I cannot provide answers to any questions relevant to this lawsuit and I must accept this advice or risk losing my Sixth Amendment right to effective representation. Accordingly, I assert my federal constitutional rights under the Fifth, Sixth, and Fourteenth Amendments as guaranteed by the United States Constitution. Drawing an adverse inference under these circumstances would unconstitutionally burden my exercise of my constitutional rights, would be unreasonable, and would therefore violate the Constitution. In addition to and without waiving his constitutional privileges, Defendant also objects as the interrogatory is overbroad and seeks information that is neither relevant to the subject matter of the pending action nor does it appear reasonably calculated to lead to the discovery of admissible evidence. Plaintiff's Complaint alleges a time period of "in or about 2004-2005." Plaintiff's interrogatory seeks information for a time period from January 1, 2003 until present.

**Interrogatory Number 11** - Identify all telephone numbers used by Epstein, including cellular phones and land lines in any of his residences, by stating the complete telephone number and the name of the service provider.

**Response:** Defendant is asserting specific legal objections to the interrogatories as well as his U.S. constitutional privileges. I intend to respond to all relevant questions regarding this lawsuit, however, my attorneys have counseled me that I cannot provide answers to any questions relevant to this lawsuit and I must accept this advice or risk losing my Sixth Amendment right to effective representation. Accordingly, I assert my federal constitutional rights under the Fifth, Sixth, and Fourteenth Amendments as guaranteed by the United States Constitution. Drawing an adverse inference under these circumstances would unconstitutionally burden my exercise of my constitutional rights, would be unreasonable, and would therefore violate the Constitution. In addition to and without waiving his constitutional privileges, Defendant

also objects as the interrogatory is overbroad and seeks information that is neither relevant to the subject matter of the pending action nor does it appear reasonably calculated to lead to the discovery of admissible evidence. Plaintiff's allegations claim a time period of "in or about 2004-2005" and involve Defendant's Palm Beach residence.<sup>1</sup>

(i). **The Allegations In the Second Amended Complaint and The NPA**<sup>2</sup>

6. The circumstances of this case (and in other related cases) are such that not only does Epstein face allegations of sexual misconduct with and abuse, exploitation, and sexual battery of alleged minors in this and other civil actions in the State of Florida, but he also faces a potential federal criminal prosecution based on the same factual allegations. The Plaintiff's attorney represents Jane Doe Nos. 2, 3, 4, 5, 6, and 7, in civil actions against Epstein filed in this Court. In this and the other civil actions, the Plaintiffs reference federal and state criminal statutes in an attempt to allege claims ranging from sexual battery to intentional infliction of emotional distress, to a violation of 18 U.S.C. 2422, entitled "Coercion and enticement", contained in Title 18, "Crimes and Criminal Procedure," Part I, "Crimes," Chapter 117, "Transportation for Illegal Sexual Activity and Related Crimes," to a cause of action pursuant to 18 U.S.C. §2255 – which creates a civil remedy for personal injuries where a plaintiff can show a violation of specified criminal statutes. Plaintiff is attempting to allege a violation of 18 U.S.C. §2422. See current text of 18 U.S.C. §2422, along with pre-2006 amended text. See Exhibit "C"

<sup>1</sup> The Court also considered various objections set forth in Defendant's Response Memorandum. See Order at [DE 242.]

<sup>2</sup> Certain particularized portions of this filing are being submitted in camera in that they contain an explanation for Epstein's assertion of his Fifth Amendment privilege against self-incrimination that is more detailed and more factually based than the more generic justifications contained in the non-redacted paragraphs. Epstein understands that you cannot just blanketly claim a privilege and that to permit judicial review a greater explanation for the assertion may be needed or even ordered; however, a citizen claiming this privilege should not have to risk or lose or waive or diminish the protections of the privilege in order to assert it and have it subject to judicial review. If the privilege is allowed, Epstein should be in the same position vis-a-vis his adversaries, both civil and criminal, as he would be in if his assertion was not denied (whether as a final or conditional ruling). An in-camera submission, alone, permits Epstein to explain the rationale of the assertion without reducing the scope of its protection.

CONFIDENTIAL  
EYES ONLY

hereto - copy of Plaintiff's Second Amended Complaint. Most importantly, the lynchpin for the exercise of federal criminal jurisdiction under 18 U.S.C. 2422(b) is the use of "any facility or means of interstate or foreign commerce". Thus, facially, an essential condition of any allegation of this statutory offense is the use of a telephone or a cellular phone as a facility of interstate commerce during which use there was persuasion, inducement, enticing, or coercing of an underage person to engage in prostitution or sexual activity. As more fully discussed, infra, contested interrogatory 11 asks that Epstein make a testimonial disclosure of information regarding the availability to him of such interstate facilities and thus would constitute a link in the chain of evidence that could potentially expose him to the hazards of self-incrimination as to 18 U.S.C. 2422(b) violations.

7. Likewise, other Jane Does such as Jane Doe 102 have contended that they are entitled to 18 U.S.C. 2255 damages based on Epstein's violation of 18 U.S.C. 2423(b) a separate federal criminal statute that prohibits "a person who travels in interstate commerce or travels into the United States...for the purpose of engaging in illicit sexual activity". As more fully discussed, infra, contested interrogatory 7, by seeking testimonial disclosures regarding dates Epstein traveled to and from the State of Florida, would constitute a link in the chain of evidence that could potentially expose him to the hazards of self-incrimination as to 18 U.S.C. 2423(b) violations

8. Both 18 U.S.C. 2422(b) and 18 U.S.C. 2423(b) were amongst the target offenses of a joint FBI-United States Attorney investigation further demonstrating the extent to which Epstein's refusal to respond to each interrogatory is, as required, based on a specific apprehension of a compelled disclosure providing a link in the chain of

CONFIDENTIAL  
EYES ONLY

evidence adverse to him as required by *Hoffman v United States*, 341 US 479, 486 (1951). Importantly, the United States Supreme Court has expressly encompassed the innocent citizen as well as the guilty within the ambit of Fifth Amendment protections i.e. that Epstein may deny any allegation that he violated either of the above-described federal statutes is not in conflict with his constitutional right not to be compelled by interrogatory requests to make disclosure that would further any investigation against him, *Ohio v Reiner*, 532 U.S. 17 (2001).

9. Plaintiff also alleges that "Sarah Kellen, Epstein's assistant" was a part of "Epstein's plan and scheme (which) reflected a particular pattern and method" in the alleged recruiting of girl's to come to Epstein's Palm Beach mansion and give him "massages" in exchange for money. See 2<sup>nd</sup> Am. Complaint, ¶11-12. Given the allegations of violations of 18 U.S.C. 2422 in Count III, the plaintiff is alleging that the recruiting occurred over the telephone, see par 9-10 of the Second Amended Complaint. (Paragraph 10 includes an averment that it was Kellen's routine to seek telephone contact information from the plaintiff) According to the allegations: "Upon information and belief Epstein has a sexual preference and obsession for underage minor girls." *Id.* ¶8. "Sarah Kellen" would "bring the girl up a flight of stairs to a bedroom that contained a massage table [in his Palm Beach mansion]..." The girl would be alone with Epstein. Epstein would "lie naked on the massage table, and direct the girl to remove her clothes." "Epstein would then perform one or more lewd, lascivious and sexual acts, including masturbation and touching the girl's vagina." *Id.* ¶11, Exhibit B. Plaintiff alleges that Epstein "sexually assaulted" her. *Id.* ¶12. Plaintiff also alleges that Epstein "maintains his principal home in New York and also owns residences in New Mexico, St. Thomas and

CONFIDENTIAL  
EYES ONLY

Palm Beach, FL.” Id. ¶7. “Upon information and belief, Jeffrey Epstein carried out his scheme and assaulted girls in Florida, New York and on his private island, known as Little St. James, in St. Thomas.” Id. ¶9. The nature of the allegations are serious, and state clearly that the alleged assaults occurred in Florida, New York and in St. Thomas.

10. The threat of criminal prosecution is real and present as Epstein remains under the scrutiny of the United States Attorney’s Office (“USAO”), which is explained and/or acknowledged in his Response Memorandum and in the Court’s Order (DE 242). As this Court knows, Epstein entered into a Non-Prosecution Agreement (“NPA”) with United States Attorney’s Office for the Federal Southern District of Florida. The terms and conditions of the NPA also entailed Epstein entering into a Plea Agreement with the State Attorney’s Office, Palm Beach County, State of Florida. By its terms, the NPA took effect on June 30, 2008. As well, pursuant to the NPA, any criminal prosecution against Epstein is deferred as long as the terms and conditions of the NPA are fulfilled by Epstein. The federal grand jury investigation against Epstein is held in abeyance i.e. it is not concluded with finality until the NPA expires by its terms in late 2010 and as long as the USAO determines that Epstein has complied with those terms and conditions. The threat of criminal prosecution against Epstein by the USAO continues presently and through late 2010. The USAO possesses the right to declare that the agreement has been breached, give Epstein’s counsel notice, and attempt to move forward with the prosecution. Moreover, the NPA does not provide Epstein with any protection from criminal investigation or prosecution in any federal district other than the Southern District of Florida. The Second Amended Complaint includes an averment that Epstein both resided in and engaged in illegal sexual conduct in districts outside the Southern

CONFIDENTIAL  
EYES ONLY

District of Florida, see par 7 and 9. In other words, the fact that there exists a NPA does not mean that Epstein is free from future criminal prosecution, which the Magistrate Judge's Order also acknowledged. (DE 242, p.4) In fact, the Order acknowledged that "[t]he danger Epstein faces by being forced to testify in this case is substantial and real, and not merely trifling or imaginary as required." (DE 242, p. 10). Moreover, several of the interrogatories "involve compelled statements that would furnish a link in the chain of evidence needed to convict Epstein of a crime, [and ruled that] Epstein's Fifth Amendment privilege claims [were] validly asserted. (DE 242, p. 10). For the reasons set forth in Epstein's Response Memorandum and herein, that same ruling should have been reached relative to Interrogatory Numbers 7 and 11 given the Magistrate-Judge's reasoning in upholding the invocation of privilege as to other interrogatories and given the close nexus between the information requested in interrogatories 7 and 11 and the pivotal jurisdictional requisites of 18 U.S.C. 2422(b)(the use of interstate facilities such as telephones and cellars) and 18 U.S.C. 2423(b)(the requirement of interstate travel i.e. travel from one of Epstein's out of state residences to Florida or from Florida to one of such residences, see 2nd Amended Complaint par 7 for averment that Epstein resides, in part, outside Florida thus necessitating interstate travel to and from Florida). See *infra* for argument regarding the court having already sustained Epstein's 5<sup>th</sup> Amendment Privilege in connection with Interrogatory Number 12.

11. The Magistrate Judge also denied interrogatory numbers 1, 2, and 10 because those interrogatories sought the names of Epstein's employees or their telephone numbers and thus "would furnish a link in the chain of evidence needed to prosecute Epstein of a crime." (DE 242, p.8-9). Additionally, this court denied interrogatory

CONFIDENTIAL  
EYES ONLY

numbers 13, 14 and 17 because those asked Epstein to identify persons or witnesses that have knowledge of the events in question. *Id.* at p. 8. In making the decision, the court recognized, much like this Motion for Reconsideration and/or Appeal contends, that “. . . the facts alleged in the Complaints, the elements needed to convict Epstein of a crime, and . . . the Court’s knowledge concerning the cases at issue” provide a basis for Epstein to raise the privilege based upon “genuinely threatening questions” which could furnish a link in the chain of evidence needed to convict Epstein of a crime. (DE 242, p.18) United States v. Goodwin, 625 F.2d 693, 701 (5<sup>th</sup> Cir. 1980).

**b. The District Court Judge Court Should Reverse or Modify The Magistrate Judge’s Order (DE 242) Relative to Interrogatory Numbers 7 and 11 Because The Specific Findings Therein Are Erroneous and Contrary to Law**

**(i) Specific Objections**

12. In his Response Memorandum, Epstein cites authority supporting his application of the 5<sup>th</sup> Amendment Privileges and other constitutional privileges in which he relies upon in objecting to Interrogatory Numbers 7 and 11. In addition to those arguments and objections, this court should consider the arguments and objections set forth herein.

13. In short, the Magistrate Judge’s Order requires Epstein to answer Interrogatory Numbers 7 and 11 based upon the finding that his objections are “. . . so general and sweeping in nature [that they] amount[] to a blanket assertion of the [Fifth Amendment] privilege.” (DE 242, p.11) Obviously, Epstein objects to such a ruling, and provides below detailed reasoning demonstrating the validity of Epstein’s objections that answers to the subject interrogatories would realistically and necessarily furnish a link in the chain of evidence needed to prove a crime against him and would require him to

provide self-incriminating evidence relative to this case and to the other related cases that could result in a specific hazard of self-incrimination. For the reasons set forth below, Epstein's justified concern with regard to answering Interrogatory Numbers 7 and 11 and the resulting waiver of his Fifth Amendment Privilege in this regard and/or providing self-incriminating information is substantial, real and not merely imaginative. Accordingly, the District Court Judge should reverse and/or modify the Magistrate's Order relative to Interrogatory Numbers 7 and 11.

**(ii) Argument and Memorandum of Law**

14. By answering Interrogatory Numbers 7 and 11, Epstein is being compelled to testify as to the issues and facts not only asserted in Plaintiff's Second Amended Complaint, but also to facts which present a real and substantial danger of self-incrimination in this case, in other related cases and as well in areas that could result in criminal prosecution. Again, the information sought all relate to potential federal claims of violations of 18 U.S.C. 2422(b), 18 U.S.C. 2423(b), and 18 U.S.C. 1591.

15. Here, Epstein's whereabouts and telephone numbers are central issues to this case and other related cases. Answers to the interrogatories will undoubtedly result in subsequent subpoenas requesting information regarding Epstein's whereabouts and his numbers for his cellular telephones and landlines in ANY of his residences, which will obviously reveal the individuals Epstein spoke to, and the time and place where the conversations occurred. If Epstein's travel to and from Florida is identified and he is compelled to provide his telephone information, that information coupled together could subsequently be used to incriminate him and it might be used to prosecute him for a criminal offense. See infra. In fact, providing his telephone information would not only

incriminate Epstein on the elements required to establish a criminal offense, but in this case it is asking Epstein to incriminate himself by providing information that could lead to the identification of potential witnesses against him. Epstein would also be providing information that would later result in documents being subpoenaed and possibly produced relative to his travel itinerary and his telephone records. As such, Epstein is now being asked to provide testimonial disclosures that would communicate statements of fact by admitting that he did travel to and from Florida on certain occasions and by admitting that he had certain telephone numbers and providers, thereby requiring him to admit the very facts upon which Plaintiff's Second Amended Complaint is based i.e. presence in Florida at the time of an allegation of misconduct or control of a particular telephone at the time of a claim that the plaintiff was recruited and will inexorably result in leads to further documents such as travel records and/or telephone records that themselves can be predictably used to bolster the criminal-related allegations against Epstein. See generally Hoffman v United States 341 US 479, 486 (1951), U.S. v Hubbell, 530 U.S. 27, 36 (2000).

16. In compelling Epstein to respond to the subject interrogatories per the Magistrate's Order, this Court must study the elements of the offenses pled by Plaintiff in order to reach a different conclusion. For instance, 18 U.S.C. 2422, Coercion and Enticement, provides:

(a) Whoever knowingly persuades, induces, entices, or coerces any individual to *travel in interstate or foreign commerce, or in any Territory or Possession of the United States*, to engage in prostitution, or in any sexual activity for which any person can be charged with a criminal offense, or attempts to do so, shall be fined under this title or imprisoned not more than 20 years, or both.

CONFIDENTIAL  
EYES ONLY

(b) Whoever, *using the mail or any facility or means of interstate or foreign commerce, or within the special maritime and territorial jurisdiction of the United States* knowingly persuades, induces, entices, or coerces any individual who has not attained the age of 18 years, to engage in prostitution or any sexual activity for which any person can be charged with a criminal offense, or attempts to do so, shall be fined under this title and imprisoned not less than 10 years or for life.

17. The underlying criminal offense, as it relates to Interrogatory Number 7, is "... knowingly persuading, inducing, enticing or coercing any individual to **travel** in interstate or foreign commerce, or in any Territory or Possession of the United States, to engage in prostitution, or in any sexual activity for which any person can be charged with a criminal offense, or attempts to do so . . . ." *Id.* Interrogatory Number 7 asks for time periods Epstein was present in Florida and the dates he arrived and departed (i.e., traveled into and out of Florida). Plaintiff alleges that Epstein engaged a "scheme and plan" against minor girls at his places of residence (i.e., Florida, New York and St. Thomas). Forcing Epstein himself to provide this information may provide a clue or a link in the chain of evidence allowing Plaintiff or others to satisfy one or more of the elements of 18 U.S.C. 2422(a) resulting in self-incrimination, and may subject Epstein to future criminal prosecution under the NPA or in another district for an alleged violation of a criminal offense. See *infra*. This Court should not compel Epstein to provide the specified information as that would violate his constitutional rights under the Fifth Amendment by compelling him to provide incriminating information.

18. Next, the underlying criminal offense, as it relates to Interrogatory Number 11, is "... using the mail or any facility or means of interstate or foreign commerce, or within the special maritime and territorial jurisdiction of the United States knowingly persuades, induces, entices, or coerces any individual who has not attained the

CONFIDENTIAL  
EYES ONLY

age of 18 years, to engage in prostitution or any sexual activity for which any person can be charged with a criminal offense, or attempts to do so. . . .” Id. Interrogatory Number 11 asks for Epstein to identify all **telephone numbers** used by Epstein, including **cellular phones** and **landlines** in any of his residences, by stating the complete telephone number and the name of the service provider. Plaintiff alleges that Epstein engaged a “scheme and plan” against minor girls at his places of residence, (i.e., Florida, New York and St. Thomas). Forcing Epstein himself to provide this information may provide a clue or a link in the chain of evidence allowing Plaintiff or others to satisfy one or more of the elements of 18 U.S.C. 2422(b) (e.g., telephones – the use of any facility or means of interstate or foreign commerce) resulting in self-incrimination, and may subject Epstein to future criminal prosecution under the NPA or in another district for an alleged violation of a criminal offense. See *infra*. Again, this Court should not compel Epstein to provide the specified information as that would violate his constitutional rights under the Fifth Amendment by compelling him to provide incriminating information. Not only would such compelled testimony self-incriminate him on the elements required to establish a criminal violation, and thus serve as a link in the chain of evidence needed to prosecute Epstein for a crime, but it serves to incriminate him by asking Epstein to identify potential witnesses against him if his cell phone records are later obtained by and through subpoena(s). See *supra*.

Significantly, this Court sustained Epstein’s objections to Interrogatory Number 12, which requested information similar to Interrogatory Number 11 (i.e., “. . . telephone numbers of employees of Epstein, used in the course or scope of their employment, including cellular phones and land lines in any of his residences, by stating the complete

**CONFIDENTIAL**  
**EYES ONLY**

telephone number and the name of the service provider.”) (DE 242, p.10). In short, the Court considered “the nature of the allegations, to wit, a scheme and plan of sexual misconduct carried out at Epstein various residences. . . [finding it] entirely reasonable for Epstein to assert that forcing him to testify as to. . . his employee’s telephone numbers [Interrogatory 12] may provide a lead or clue to evidence tending to incriminate him.” The Magistrate Judge further reasoned that “[n]ot only would such compelled testimony self-incriminate him on the elements required to establish a criminal violation, and thus serve as a link in the chain of evidence needed to prosecute Epstein for a crime, but in some cases serve to incriminate him by asking Epstein to identify potential witnesses against him.” (DE 242) That same reasoning and conclusion should have been reached with regard to Interrogatory Number 11.

19. In addition, compelling Epstein to provide the requested information could also lead to or provide a link in the chain of evidence allowing Plaintiff or others to satisfy one or more of the elements of 18 U.S.C. §2255 (i.e., information that may show or lead to evidence that a minor was a victim of a violation of section 2241(c), 2242, 2243, 2251, 2251A, 2252, 2252A, 2260, 2421, 2422, or 2423 and suffered personal injury as a result of such violation). In this regard, providing Epstein’s flight itinerary to and from Florida as well as his telephone records may result in Epstein providing evidence resulting in self-incrimination, and may also subject Epstein to future criminal prosecution under the NPA or in another district for an alleged violation of a criminal offense. Given the nature of the allegations, to wit, a scheme and plan of sexual misconduct, this court should find it entirely reasonable for Epstein to assert his Fifth Amendment privilege as to Interrogatory Numbers 7 and 11. For instance, Plaintiff

CONFIDENTIAL  
EYES ONLY

alleges and the Magistrate Judge's Order acknowledges allegations of a scheme where Epstein, with the help of his assistant [REDACTED], allegedly lured economically disadvantaged minor girls to his homes in Palm Beach, New York and St. Thomas, with the promise of money in exchange for a massage. As this Court noted in its order, "... the fact there exists a Non-prosecution Agreement does not mean that Epstein is free from future criminal prosecution, and that in fact, 'the threat of prosecution is real, substantial, and present.'" The Court must be mindful because pursuant to the NPA, any criminal prosecution against Epstein in the Southern District of Florida is deferred as long as the terms and conditions of the NPA are fulfilled by Epstein. Accordingly, Epstein's travel to and from Florida and the telephone numbers to his cellular telephones and landlines would provide information which is protected by the privilege i.e., where "the responses would merely provide a 'lead or clue' to evidence having a tendency to incriminate." United States v., Neff, 615 F.2d 1235, 1239 (9<sup>th</sup> Cir.), cert. denied, 447 U.S. 825 (1980).

19. Additionally, the underlying criminal investigation that led to the NPA was focused as well on violations of 18 U.S.C. 1952. This statute titled the Interstate and Foreign travel or Transportation in Aid of Racketeering Enterprises, has the following underlying criminal elements - "... travels in interstate or foreign commerce or uses the mail or any facility in interstate or foreign commerce, with intent to ... (1) distribute the proceeds of any unlawful activity; or (2) commit any crime of violence to further any unlawful activity; or (3) otherwise promote, manage, establish, carry on, or facilitate the promotion, management, establishment, or carrying on, of any unlawful activity, all in connection with, among other things, 'prostitution' (emphasis added). Clearly, the

CONFIDENTIAL  
EYES ONLY

request for travel information (or phone information that could lead to travel itineraries or agencies or third party witnesses) would be a link in the chain to further any investigation of this statute

20. On their face, Interrogatory Numbers 7 and 11 may not seem to seek incriminating evidence. However, after review of the objections and analysis set forth herein, it is clear that responding to same would violate Epstein's Fifth Amendment privilege against self incrimination. Accordingly, forcing Epstein to answer the interrogatories unconstitutionally places him in the position of being compelled to testify and provide information that support Plaintiff's version of the facts and which may lead to future criminal prosecution.

21. The Fifth Amendment serves as a guarantee against testimonial compulsion and provides, in relevant part, that "[n]o person...shall be compelled in any Criminal Case to be a witness against himself." (DE 242, p.5). In practice, the Fifth Amendment's privilege against self-incrimination "permits a person not to answer official questions put to him in any other proceeding, civil or criminal, formal or informal, where the answers might incriminate him in future criminal proceedings." Edwin v. Price, 778 F.2d 668, 669 (11<sup>th</sup> Cir. 1985), citing Lefkowitz v. Turley, 414 U.S. 70, 77 (1973)). The privilege is accorded "liberal construction in favor of the right it was intended to secure," Hoffman v. United States, 341 U.S. 479, 486 (1951), and extends not only to answers that would in themselves support a criminal conviction, but extends also to those answers which would furnish a link in the chain of evidence needed to prosecute the claimant for a crime. Id.; Blau v. United States, 340 U.S. 159 (1950). Thus, information is protected by the privilege not only if it would support a criminal

CONFIDENTIAL  
EYES ONLY

conviction, but also in those instances where “the responses would merely provide a ‘lead or clue’ to evidence having a tendency to incriminate.” United States v. Neff, 615 F.2d 1235, 1239 (9<sup>th</sup> Cir.), cert. denied, 447 U.S. 825 (1980). The Fifth Amendment’s privilege against self-incrimination comes into play only in those instances where the witness has “reasonable cause to apprehend danger from a direct answer.” Hoffman 341 U.S. at 486 (citing Manson v. United States, 244 U.S. 362, 365 (1917)). “The claimant must be ‘confronted by substantial and ‘real,’ and not merely trifling or imaginary, hazards of incrimination.” United States v. Apfelbaum, 445 U.S. 115, 128 (1980). Accordingly, for these reasons, Epstein’s objections to the Magistrate’s Order should be sustained, and this Court should enter an order reversing and/or modifying the Order allowing Epstein to assert his Fifth Amendment privilege and not requiring Epstein to provide compelled testimony that might incriminate him.

Based upon the underlying criminal elements of the targeted offenses , answers to Interrogatory Number 7 involving Epstein’s travel to and from Florida and Interrogatory Number 11 involving Epstein’s use of his telephones could provide a lead or clue to evidence of an alleged violation of any one of the above target offenses, which could result in criminal prosecution, a breach of the NPA and/or self-incriminating evidence relating to this case and/or to other cases that may result in criminal prosecution.

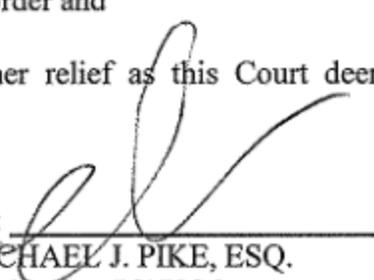
Accordingly, any compelled testimony that provides a “lead or clue to a source of evidence of such [a] crime” is protected by Fifth Amendment. SEC v Leach, 156 F.Supp.2d 491, 494 (E.D. PA. 2001). Questions seeking “testimony” regarding names of witnesses, leads to phone or travel records, or financial records that would provide leads to tax or money laundering or unlicensed money transmittal investigations are protected.

See also Hoffman v United States, 341 U.S. 479, 486 (1951) (“the right against self-incrimination may be invoked if the answer would furnish a link in the chain of evidence needed to prosecute for a crime”).

22. In this instance, the danger Epstein faces by being forced to testify in this case and on these subject matters is substantial and real, and not merely trifling or imaginary. Epstein has met his burden to sustain his 5<sup>th</sup> Amendment Privilege, and has further established that “[t]he danger [he] faces by being forced to testify in this case is substantial and real, and not merely trifling or imaginary as required.” (DE 242) Accordingly, this Court should reverse and/or revise the Magistrate’s Order as set forth below.

Wherefore, Epstein respectfully requests that this Court issue and order:

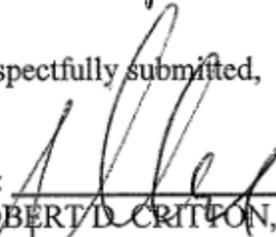
- a. finding that the danger Epstein faces by being forced to testify in this case relative to Interrogatory Numbers 7 and 11 is substantial and real, and not merely trifling or imaginary;
- b. sustaining Epstein’s Fifth Amendment Privilege as it relates to Interrogatory Numbers 7 and 11 and denying Plaintiff’s Motion in that regard;
- c. reversing and/or revising the Magistrate’s Order (DE 242) relative to Interrogatory Numbers 7 and 11 and entering an amended order sustaining Epstein’s objections to the Magistrate’s Order as to those specific interrogatories and not requiring him to testify as to same; and/or
- d. remanding this appeal to the Magistrate-Judge for her reconsideration of these portions of her order and
- e. for such other and further relief as this Court deems just and proper.

By:   
MICHAEL J. PIKE, ESQ.  
Florida Bar #617296

**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 by CM/ECF on this 31 day of August, 2009.

Respectfully submitted,

By:   
ROBERT D. CRITTON, JR., ESQ.  
Florida Bar No. 224162  
[rcrit@bclclaw.com](mailto:rcrit@bclclaw.com)  
MICHAEL J. PIKE, ESQ.  
Florida Bar #617296  
[mpike@bclclaw.com](mailto:mpike@bclclaw.com)  
BURMAN, CRITTON, LUTTIER &  
COLEMAN  
515 N. Flagler Drive, Suite 400  
West Palm Beach, FL 33401  
561/842-2820 Phone  
561/515-3148 Fax  
(Counsel for Defendant Jeffrey Epstein)

**Certificate of Service**  
**Jane Doe No. 2 v. Jeffrey Epstein**  
**Case No. 08-CV-80119-MARRA/JOHNSON**

Stuart S. Mermelstein, Esq.  
Adam D. Horowitz, Esq.  
Mermelstein & Horowitz, P.A.  
18205 Biscayne Boulevard  
Suite 2218  
Miami, FL 33160  
305-931-2200  
Fax: 305-931-0877  
[ssm@sexabuseattorney.com](mailto:ssm@sexabuseattorney.com)  
[ahorowitz@sexabuseattorney.com](mailto:ahorowitz@sexabuseattorney.com)  
*Counsel for Plaintiffs*  
*In related Cases Nos. 08-80069, 08-80119,*  
*08-80232, 08-80380, 08-80381, 08-80993,*  
*08-80994*

Brad Edwards, Esq.  
Rothstein Rosenfeldt Adler  
401 East Las Olas Boulevard  
Suite 1650  
Fort Lauderdale, FL 33301  
Phone: 954-522-3456  
Fax: 954-527-8663  
[bedwards@rra-law.com](mailto:bedwards@rra-law.com)  
*Counsel for Plaintiff in Related Case No.*  
*08-80893*

Paul G. Cassell, Esq.  
*Pro Hac Vice*  
332 South 1400 E, Room 101

Richard Horace Willits, Esq.  
Richard H. Willits, P.A.  
2290 10<sup>th</sup> Avenue North  
Suite 404  
Lake Worth, FL 33461  
561-582-7600  
Fax: 561-588-8819  
*Counsel for Plaintiff in Related Case No.  
08-80811*  
[reelrhw@hotmail.com](mailto:reelrhw@hotmail.com)

Jack Scarola, Esq.  
Jack P. Hill, Esq.  
Searcy Denney Scarola Barnhart & Shipley,  
P.A.  
2139 Palm Beach Lakes Boulevard  
West Palm Beach, FL 33409  
561-686-6300  
Fax: 561-383-9424  
[jsx@searcylaw.com](mailto:jsx@searcylaw.com)  
[jph@searcylaw.com](mailto:jph@searcylaw.com)  
*Counsel for Plaintiff, C.M.A.*

Bruce Reinhart, Esq.  
Bruce E. Reinhart, P.A.  
250 S. Australian Avenue  
Suite 1400  
West Palm Beach, FL 33401  
561-202-6360  
Fax: 561-828-0983  
[ecf@brucereinhardt.com](mailto:ecf@brucereinhardt.com)  
*Counsel for Defendant*

Theodore J. Leopold, Esq.  
Spencer T. Kuvin, Esq.  
Leopold, Kuvin, P.A.  
2925 PGA Blvd., Suite 200  
Palm Beach Gardens, FL 33410  
561-684-6500  
Fax: 561-515-2610  
*Counsel for Plaintiff in Related Case No.  
08-08804*

Salt Lake City, UT 84112  
801-585-5202  
801-585-6833 Fax  
[cassellp@law.utah.edu](mailto:cassellp@law.utah.edu)  
*Co-counsel for Plaintiff Jane Doe*

Isidro M. Garcia, Esq.  
Garcia Law Firm, P.A.  
224 Datura Street, Suite 900  
West Palm Beach, FL 33401  
561-832-7732  
561-832-7137 F  
[isidrogarcia@bellsouth.net](mailto:isidrogarcia@bellsouth.net)  
*Counsel for Plaintiff in Related Case No.  
08-80469*

Robert C. Josefsberg, Esq.  
Katherine W. Ezell, Esq.  
Podhurst Orseck, P.A.  
25 West Flagler Street, Suite 800  
Miami, FL 33130  
305 358-2800  
Fax: 305 358-2382  
[rjosefsberg@podhurst.com](mailto:rjosefsberg@podhurst.com)  
[kezell@podhurst.com](mailto:kezell@podhurst.com)  
*Counsel for Plaintiffs in Related Cases  
Nos. 09-80591 and 09-80656*

Jack Alan Goldberger, Esq.  
Atterbury Goldberger & Weiss, P.A.  
250 Australian Avenue South  
Suite 1400  
West Palm Beach, FL 33401-5012  
561-659-8300  
Fax: 561-835-8691  
[jagesq@bellsouth.net](mailto:jagesq@bellsouth.net)  
*Counsel for Defendant Jeffrey Epstein*