UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE APPLICATION TO QUASH SUBPOENAS TO DAILY NEWS, L.P., AND GEORGE RUSH	No. 10 M8-85 (LMM)

REPLY DECLARATION OF ANNE B. CARROLL

Pursuant to 28 U.S.C. § 1746, Anne B. Carroll declares as follows:

1. I am Vice President and General Counsel of movant Daily News, L.P., publisher of the New York *Daily News* (the "Daily News"). I am admitted to practice before this Court.

2. I make this Declaration in further support of the motion of the Daily News and Daily News journalist George Rush for an Order pursuant to Fed. R. Civ. Proc. 45(c)(3)(A)(iii) quashing subpoenas *ad testificandum* and *duces tecum* served on them by plaintiff Jane Doe in an action pending in the United States District Court for the Southern District of Florida captioned Jane Doe v. Jeffrey Epstein, No. 08-cv-80893-KAM, or in the alternative for a Protective Order pursuant to Fed. R. Civ. Proc. 26(c)(1).

3. Annexed hereto as Exhibit A is a true and correct copy of E & J Gallo Winery v. Encana Energy Servs., Inc., 33 Med. L. Rptr. 1413 (S.D.N.Y. 2005) (Preska, J.).

4. Annexed hereto as Exhibit B is a true and correct copy of L.W. v. Knox County Bd. of Educ., 36 Med. L. Rptr. 1721 (E.D. Tenn. 2008).

5. Annexed hereto as Exhibit C is the Supplementary Affidavit of George Rush in this proceeding, sworn to on April 30, 2010.

6. Jane Doe's brief in opposition to Jeffrey Epstein's motion for summary judgment dismissing the federal claims in this action ("SJ Opp.") may be found on PACER, S.D. Fla. Civil Docket for Jane Doe v. Jeffrey Epstein, Case # 9:08-cv-80893-KAM ("Docket")), DE 140. Doe's

expressions of confidence in the strength of the evidence in her own case may be found at, e.g., SJ Opp 2 (Doe "has ample evidence that [Epstein] committed federal sex offenses against her"); 11 (Epstein's fraudulent concealment of assets "evidences [his] awareness that he is liable to the girls for substantial sums of money because of his sexual abuse of them," citing Epstein's Mar. 8, 2010, deposition); 12 ("Epstein does not deny that he repeatedly sexually abused Jane Doe when she was a minor"); 35 ("Jane Doe can easily prove her case").

7. Specific examples given in Doe's opposition to summary judgment of invocations of the 5th Amendment warranting adverse inferences include Epstein's silence in the face of such confrontational Requests for Admission as "[y]ou have committed sexual assault against Plaintiff, a minor," and "[y]ou digitally penetrated Plaintiff when she was a minor," SJ Opp. at 4, and his refusal to answer numerous questions at a Mar. 8, 2010, deposition, id. at 10 & Ex. D.

8. Annexed hereto as Exhibit E is a copy of pertinent pages of the Complaint in Epstein v. Rothstein, Edwards & [redacted] No. 50 2009 CAO 40800 (Cir. Ct., 15th Jud. Cir., Palm Beach Co., Dec. 7, 2009), as downloaded from http://www.scribd.com/doc/23947743/121009-epstein.

9. Shortly after receiving service of the subpoenas served on Daily News, L.P., and George Rush which movants seek to quash in this proceeding, I asked plaintiff's counsel Bradley Edwards whether he would withdraw them in exchange for an affidavit from Mr. Rush attesting to the fact that he had interviewed Mr. Epstein. Mr. Edwards said he would not.

10. On Friday, April 30, 2010, I received service of a subpoena from Doe's counsel requiring movant journalist George Rush to appear before this Court on May 4, 2010, at 11:00 a.m., for the purpose of giving testimony in an evidentiary hearing in connection with this matter. A copy of the subpoena is annexed hereto as Exhibit F.

11. On Friday, April 30, 2010, I emailed the Supplementary Affidavit of

George Rush (Exhibit C hereto) in this proceeding to counsel for plaintiff Doe and asked if, having seen it, they would withdraw the testimonial subpoena to Rush, given that there are no material facts in dispute among the parties to this proceeding. Counsel responded that they would do so only if movants would stipulate to the accuracy of all facts alleged in the subpoenas of Bradley Edwards and Michael Fisten submitted in support of Doe's opposition to movants' motion to quash or for a protective order. I declined.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on May 3, 2010

Anne B. Carroll

Anne B. Carroll (AC 5322)

EXHIBIT A

Media Law Reporter®

Source: Media Law Reporter Cases > U.S. District Courts, New York > E&J Gallo Winery v. Encana Energy Services Inc., 33 Med.L.Rptr. 1413 (S.D.N.Y. 2005)

33 Med.L.Rptr. 1413

E&J Gallo Winery v. Encana Energy Services Inc.

U.S. District Court
Southern District of New York

No. M8-85

January 12, 2005

E&J GALLO WINERY, a California corporation v. ENCANA ENERGY SERVICES INC., a Delaware corporation, f/k/a PANCANADIAN ENERGY SERVICES INC.; ENCANA CORPORATION, a Canadian corporation, f/k/a and successor to PANCANADIAN ENERGY CORPORATION

Headnotes

NEWSGATHERING

[1] Forced disclosure of information — Disclosure of unpublished information — In civil actions (▶60.1003)

Forced disclosure of information — Common law privilege (▶60.20)

Plaintiff's subpoena seeking documents and testimony from nonparty media entity will be quashed, since information sought is subject to full protection of qualified reporter's privilege, in that nonparty engages in newsgathering activities, information sought involves confidential sources and information, information was gathered with intent to distribute it to public in form of published price indices, and creation of price indices involves subjective editorial judgment, since plaintiff failed to overcome privilege by making sufficient showing that material sought is highly material and critical to its claims, and that it exhausted other available sources of information, and since subpoena is unduly burdensome under Fed. R. Civ. P. 45(c).

Case History and Disposition

Civil action in which plaintiff issued subpoena seeking documents and testimony from nonparty media entity. On nonparty's motion to quash.

Granted.

Attorneys

Stephen Williams, of Cotchett, Pitre, Simon & McCarthy, Burlingame, Calif., for plaintiff.

Allison Gooding, of Gibson Dunn and Crutcher, New York, N.Y., for defendants.

Victor A. Kovner, Matthew Leish, and Duffy Carolan, of Davis Wright Tremaine, New York, for nonparty McGraw-Hill Companies.

Opinion Text

Opinion By:

Preska, J.:

ORDER

Non-party The McGraw-Hill Companies, Inc. ("McGraw-Hill"), by its attorneys, "Victor A. Kovner and Matthew A. Leish, Davis Wright Tremaine LLP (Duffy Carolan, Davis Wright Tremaine LLP, of counsel) having moved for an Order quashing a subpoena *duces tecum* and *ad testificandum* issued to McGraw-Hill by E&J Gallo Winery ("Gallo") on October 25, 2004 in

connection with the underlying action pending in the Eastern District of California; and

The court having considered the Declaration of Larry Foster in Support, dated December 13, 2004, with exhibits; the Declaration of Duffy Carolan in Support, dated December 8, 2004, with exhibits; the Supplemental Declaration of Larry Foster in Support, dated January 6, 2005; the Declaration of Barbara L. Lyons in Opposition, dated December 27, 2004; the Declaration of Steven N. Williams

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in Opposition, dated December 28, 2004, with exhibits; the Request for Judicial Notice submitted in Opposition by Mr. Williams, dated December 28, 2004; the Joinder by Encana defendants in McGraw-Hill's motion; the Declaration of Julie K Buxbaum in Support of the Joinder by Encana, dated December 22, 2004, with exhibits; the Supplemental Confidential Declaration of Mr. Williams in Opposition, dated December 28, 2004, with exhibit; the various Memoranda of Law submitted by McGraw-Hill, Gallo, and the Encana defendants; and argument of counsel;

The Court hereby finds as follows:

[1] The Gallo subpoena seeks documents and testimony that are subject to the full protections of the qualified reporter's privilege as recognized in this Circuit. *In re Petroleum Products Antitrust Litigation*, 680 F.2d 5 [8 Med.L.Rptr. 1525] (2d. Cir. 1982); see also *In re Pan Am Corp.*, 161 B.R. 577 [22 Med.L.Rptr. 1118] (S.D.N.Y. 1993). McGraw-Hill has established that its division Platts is engaged in newsgathering activities in connection with its publication of price indices (also referred to as price assessments); that the subpoenaed documents and testimony involve confidential sources and confidential information; that Platts gathers information from its sources with the intent to distribute it to the public in the form of its published price indices; and that the creation of the indices involves subjective editorial judgments. Accordingly, to overcome the privilege, Gallo must make a clear and specific allowing that the documents and testimony it seeks are (1) highly material and relevant, (2) necessary or critical to its claims, and (3) not obtainable from other available sources. *Gonzales v. National Broad. Co., Inc.*, 194 F.3d 29 [27 Med.L.Rptr. 2459] (2d Cir. 1999); *Krase v. Graco Children's Products, Inc.*, 79 F.3d 346 [24 Med.L.Rptr. 1599] (2d Cir. 1996).

Gallo has failed to make a sufficient showing that the subpoenaed documents and testimony are either highly material, as required to satisfy the first prong of the three-part test, or critical to its claims, as required to satisfy the second prong. Gallo also has failed to show that it has exhausted other available sources of information, including the Encana defendants, the CFTC, and other energy companies. In particular, because Gallo cannot establish that it has exhausted the deposition process, or that it has completed its litigation efforts to seek documents and testimony from alternative sources, it cannot make a clear and specific showing of exhaustion.

Finally, I find that the subpoena is unduly burdensome under Federal Rule of Civil Procedure 45(c). While Gallo has narrowed its subpoena to the Henry Hub and hubs in California, this narrowing does not decrease the burden on McGraw-Hill for the reasons set forth in the Declarations of Mr. Foster.

Accordingly, it is hereby ORDERED that McGraw-Hill's motion to quash the subpoena *duces tecum* and *ad testificandum* is granted.

- End of Case -

EXHIBIT B

Media Law Reporter®

Source: Media Law Reporter Cases > U.S. District Courts, Tennessee > L.W. v. Knox County Board of Education, 36 Med.L.Rptr. 1721 (E.D. Tenn. 2008)

36 Med.L.Rptr. 1721
L.W. v. Knox County Board of Education
U.S. District Court
Eastern District of Tennessee

No. 3:05-CV-274

March 25, 2008

L.W., a minor, by and through his parents SAMUEL and TINA WHITSON v. KNOX COUNTY BOARD OF EDUCATION, et al.

Headnotes

NEWSGATHERING

[1] Forced disclosure of information — Disclosure of unpublished information — In civil actions (▶60.1003)

Forced disclosure of information — Common law privilege (▶60.20)

Forced disclosure of information — Statutory privilege ("shield" laws) (▶60.25)

Given federal claims raised by plaintiffs, nonparty reporter's motion to quash subpoena in civil action must be resolved under federal, and not state, law; motion is granted, even though reportor's privilege does not exist in U.S. Court of Appeals for Sixth Circuit, since, under Fed. R. Civ. P. 26, plaintiffs have failed to show that reporter possesses any unique evidence not addressed during her previous deposition or otherwise available from individuals referenced in article, since plaintiffs have had ample opportunity to obtain information sought, and since burden and expense of proposed discovery outweighs its likely benefit.

Case History and Disposition

Motion by nonparty reporter to quash subpoena in civil action.

Granted.

Attorneys

Charles W. Pope Jr., of Pope Law Offices, Athens, Tenn.; Heather G. Hacker, Alliance

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Defense Fund, Folsom, Calif., and Nathan W. Kellum and Jonathan Scruggs, of Alliance Defense Fund - Memphis, Memphis, Tenn., for plaintiffs.

Martha H. McCampbell, Office of Knox County Law Director, Knoxville, Tenn.; and Gary M. Prince and P. Alexander Vogel, of O'Neil, Parker & Williamson, Knoxville, for defendants.

Opinion Text

Opinion By:

Guyton, U.S. Magistrate Judge:

This civil action is before the Court pursuant to 28 U.S.C. §636(b), the Rules of this Court, and by the Order [Doc. 192] of the Honorable Thomas W. Phillips, United States District Judge, for disposition of non-party Ericka Mellon's Motion to Quash Subpoena and for Protective Order. [Doc. 189] On March 24, 2008, the parties appeared before the Court for a hearing on the instant motion. Attorney Richard Hollow appeared on behalf of Ms. Mellon, attorneys Martha McCampbell and Gary Prince appeared on behalf of the defendants, and attorney Jonathan Scruggs appeared on behalf of the

plaintiffs.

Ms. Mellon moves the Court to quash a deposition subpoena served on her by the plaintiffs, with the deposition set to occur on March 26, 2008, in Houston, Texas. [1] As grounds, Ms. Mellon states that the plaintiffs seek to depose Ms. Mellon regarding a newspaper article [2] she authored in May, 2005, on matters at issue in this litigation. Ms. Mellon argues that Tennessee's Shield Law protects her from having to testify in this matter, and further argues that, even if Tennessee's Shield Law does not apply, that the deposition should still be quashed under the standards established by Rule 26(b)(2) of the Federal Rules of Civil Procedure. The plaintiffs oppose the motion, arguing that under Rule 501 of the Federal Rules of Evidence, it is federal common law, not Tennessee Law, that controls, and that the Sixth Circuit does not recognize a reportorial privilege. Plaintiffs further argue that under Rule 26, the discovery sought is highly necessary for plaintiffs' case and unavailable from other sources, and thus the deposition should be permitted.

[1] Ms. Mellon, formerly a newspaper reporter in Knoxville, currently resides in Houston, where she continues to work as a newspaper reporter.

[2] The Court notes, for the sake of reference, that the newspaper article at issue was filed by the plaintiffs in conjunction with their motion for preliminary injunction. [Doc. 21, Exhibit G]

[1] Under Rule 501 of the Federal Rules of Evidence, questions of privilege are generally controlled by federal common law when the court's jurisdiction is based upon a federal question, but state law generally controls when the court is exercising diversity jurisdiction. Fed. R. Evid. 501. In the instant case, the Court is faced with several federal claims, but plaintiff also relies in part on claims under the Tennessee Constitution, thus there is a mix of state and federal claims. The Sixth Circuit has held that, when faced with a combination of federal claims and pendent state law claims, federal common law controls under Rule 501. *Hancock v. Dodson*, 958 F.2d 1367, 1372-73 (6th Cir. 1992) ("Since the instant case is a federal question case by virtue of the appellant's section 1983 claim, we hold that the existence of pendent state law claims does not relieve us of our obligation to apply the federal law of privilege."). Given the federal claims raised by the plaintiffs, the Court accordingly finds that the instant motion must be resolved under federal, not state, law.

Turning next to the question of whether there is a reportorial privilege in the Sixth Circuit, the Court finds that there is not. The Sixth Circuit has clearly recognized that reporters do not possess a special privilege against being compelled to testify. *In re Grand Jury Proceedings*, 810 F.2d 580, 584-85 [13 Med.L.Rptr. 2049] (6th Cir. 1987). Rather, the Court must apply the balancing test established by Rule 26. *In re DaimlerChrysler AG Securities Litigation*, 216 F.R.D. 395 (E.D. Mich. 2003) (finding that the Sixth Circuit does not recognize a general reportorial privilege, but quashing a deposition subpoena of a reporter under Rule 26 as unduly burdensome and duplicative). Under Rule 26(b)(2)(C):

> [t]he frequency or extent of use of the discovery methods otherwise permitted under these rules and by any local rule shall be limited by the court if it determines that: (i) the discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive; (ii) the party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or (iii) the burden or expense of the proposed discovery outweighs its likely benefit, taking into account
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> **Page 1723**
>
> the needs of the case, the amount in controversy, the parties' resources, the importance of the issues at stake in the litigation, and the importance of the proposed discovery in resolving the issues.

Fed. R. Civ. P. 26(b)(2)(C).

During the motion hearing, defense counsel stated that all of the individuals referenced in the article have been deposed in this matter, and that none of those individuals have refuted the article during their depositions. Additionally, Ms. Mellon's counsel stated that Ms. Mellon was deposed in this matter by the plaintiffs on May 26, 2006, during which Ms. Mellon answered several questions as to the veracity of the article. [3] Ms. Mellon's counsel also stated that the deposition would pose a significant hardship for Ms. Mellon, as it would necessarily require Ms. Mellon to miss work, as well as requiring Ms. Mellon to incur additional expenses associated with an attorney traveling out of state to attend a deposition.

[3] A copy of the transcript from Ms. Mellon's May 26, 2006, deposition has been filed. [Doc. 190, Exhibit B]

In contrast, the plaintiffs argue that the previous deposition of Ms. Mellon is of no use at trial if the plaintiffs cannot also introduce the underlying newspaper article, and thus that they need to conduct a second deposition in light of the Court's Order precluding the introduction of the newspaper article as an exhibit at trial. The plaintiffs contend that the information they seek from Ms. Mellon cannot be obtained from any other source, and that the information sought is essential to their

case.

With these facts in mind, the Court turns to the Rule 26 factors. Under the first factor, the Court finds that the discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive. Specifically, the Court finds that the plaintiffs have failed to show that Ms. Mellon posses any unique evidence not addressed during Ms. Mellon's previous deposition or otherwise available from the individuals referenced in the article. There is no evidence that any of the individuals referenced in the newspaper articles have denied making the statements attributed to them in the article, and thus Ms. Mellon's second deposition would be cumulative to her own previously given deposition and that of the other witnesses.

With respect to the second factor, the Court finds that the plaintiffs have had ample opportunity to obtain the information sought. The plaintiffs have previously deposed Ms. Mellon, and had ample opportunity to question her at that time, as well as ample opportunity to depose the individuals referenced in the article. With respect to the third factor, the Court finds that the burden and expense of the proposed discovery outweighs its likely benefit. Given the almost three year period since the article was published, and given the plaintiffs' failure to establish the uniqueness of Ms. Mellon's additional testimony, the Court finds that the likely benefit of this deposition would be small, and that any likely benefit is outweighed by the cost in time and money to Ms. Mellon posed by the deposition.

Thus, the Court finds that all of Rule 26 factors weigh in favor of Ms. Mellon, and, accordingly, Ms. Mellon's motion is hereby GRANTED. The deposition of Ms. Mellon scheduled for March 26, 2008, is hereby QUASHED.

IT IS SO ORDERED.

- End of Case -

ISSN 1944-0359

EXHIBIT C

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE APPLICATION TO QUASH SUBPOENAS TO DAILY NEWS, L.P., AND GEORGE RUSH	No. 10 M8-85 (LMM)

SUPPLEMENTARY AFFIDAVIT OF GEORGE RUSH

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

GEORGE RUSH, being duly sworn, deposes and says:

1. I make this affidavit in further support of the motion of Daily News, L.P., and myself to quash subpoenas served on us in this action.

2. My counsel was recently advised by one of plaintiff's attorneys that there is an additional individual -- Michael Fisten, private investigator for Doe's attorney Bradley Edwards -- to whom I described certain aspects of the taped interview with Jeffrey Epstein but whom I did not identify in my prior affidavit. Hearing that refreshed my memory that in fact I did speak to Mr. Fisten about the interview. The attorney's representation that the interview with Mr. Epstein must have occurred prior to October 22, 2009, because my conversation with Mr. Fisten took place on or about that date, is also correct. My statement in my prior affidavit that the interview took place on November 18, 2009, was drawn from an erroneous entry in my Outlook calendar. (Despite a diligent effort, I have been unable to establish the exact date on which the interview with Mr. Epstein took place.) My mistakes in failing to recall the discussion six months ago with Mr. Fisten (which in my memory became conflated with my conversations with Mr. Edwards) and in giving the wrong date for the interview were wholly inadvertent and by no means were, as

Doe's lawyers suggest in their opposition papers to this motion, intentional falsities.

3. Although I do not have a present memory of every item we discussed concerning the interview, I cannot dispute the subject matters that Fisten and Edwards say in their affidavits were covered, because most of them do at least roughly correspond to parts of the content of the interview. There are, however, additional matters discussed in the interview that plaintiff does not allege were disclosed to her litigation team and that have little or no relevance to this case.

4. I do dispute both men's characterization of a number of matters discussed, however. As this Court will be able to confirm if it does an *in camera* review of the recording, Edwards' and Fisten's accounts of what I allegedly told them -- or what is allegedly on the tape -- are off the mark or simply untrue in several important respects. Most prominently, Mr. Epstein did not state on the tape either that "he may have come too close to the line" (Edwards Aff't ¶ 13) or that "the only thing he might have done wrong was to maybe cross the line a little too closely" (Fisten Aff't ¶ 7).

5. Mr. Epstein did not make a "damning admission" during the interview about Jane Doe (or any other woman). (Doe Opp. Br. at 1, 20.) In fact, he made no reference whatsoever to Jane Doe, the plaintiff in this case. Therefore, plaintiff's allegation that the tape "is the only direct evidence in existence or available to Jane Doe to prove what Epstein thinks about what he did to her" (Opp. Br. at 22-23) is untrue.

6. As I stated in my prior affidavit, in my meeting with my three sources for whom I played a short segment of the interview tape in the process of an exchange of information to assist my reporting, there was an agreement that the contents of the interview were to be held in confidence. Plaintiff Jane Doe does not contest this. In addition, I have since learned from one of those three sources that in fact he was not present in the room when the recording was played

and heard none of it. He has expressed a willingness to submit an affidavit to that effect in this proceeding, should the Court find that appropriate or necessary.

7. I reiterate that the disclosures I made about the contents of the tape were solely in the context of seeking information from sources in the course of my reporting. Reporters doing investigative journalism customarily use information given to them by one side in a dispute as a basis for questions aimed at testing the veracity of that information and drawing out the positions of the other side, as I did in this case. I do not view my having used certain information gained during the Epstein interview in this way to be a waiver of the essential confidentiality of the interview because I did not intend to, and did not, publish the information imparted to me by Mr. Epstein during the interview. Mr. Edwards' bald statement that he and my other sources with whom I spoke about the tape "were not sources in the tradition [*sic*] sense of the word," but rather individuals with whom I was "simply chatting" (Edwards Aff't ¶ 23) fundamentally misunderstands how I and reporters generally gather information.

8. While it is correct that, in response to Mr. Fisten's request for a copy of the tape, I said that I would consider doing that but needed to check with the newspaper's lawyer (Fisten Aff't ¶ 10), in fact I never intended to give him a copy, never discussed the issue with the newspaper's lawyer, and never gave him a copy, as he confirms.

9. The statements by Mr. Fisten that I told him that I had "compiled very negative information on Epstein concerning his exploits with underage girls and how he eluded the justice system" and that I presented the story to my publisher, "who killed [it]" (Fisten Aff't ¶ 6), is false: I never represented that I had gathered any information about Mr. Epstein that was not a matter of public record, and the Daily News publisher did not "kill" my story -- in fact my article about the Epstein case was subsequently published in the paper. Besides being wrong, Mr.

Fisten's statements are also gratuitous because they have no bearing at all on the issues before this Court.

10. There is no question that the subpoenas in this case are oppressive and highly burdensome to the Daily News and to me as a reporter. Forcing me to testify and to give up the tape of my off-the-record interview would compromise my reporting by deterring other sources from speaking to me out of fear that they will become involved in third-party litigations and force me to change the way I go about my work; for example, I would no longer keep newsgathering materials important to my work, and I know I would have to think twice before taking on reporting projects that involve civil litigations, which up to now I have done frequently. Such subpoenas against the press in aid of private disputes, seeking information that offers, in this case, at best marginal support, would place extraordinary and undue time demands on myself and other reporters and impose heavy financial costs on newspapers seeking to protect their reporting at a time when the industry is struggling.

GEORGE RUSH

Sworn to before me this
30th day of April, 2010

Notary Public
BARBARA E. TORRES
Notary Public, State of New York
No. 01TO6219589
Qualified in New York County
Commission Expires March 29, 2014

EXHIBIT D

times you went to Mr. Epstein's home?

A. I don't know. Like 17.

Q. And I think you testified you never took anyone to Mr. Epstein's home, correct?

A. Yes.

Q. That's correct?

A. Yes.

Q. I asked you a little bit, I asked you at your last deposition what occurred at the first time that you went to Mr. Epstein's home. And whatever you said will be obviously on the record, so it will be there. But I want to bring you back to that time so I can ask some follow-up questions.

It's my recollection, correct me if I'm wrong, please, is that when you went to Mr. Epstein's home [redacted] was the one who took you, correct?

A. Yes.

Q. And it was your testimony that when you, at some point during the time you were in Mr. Epstein's home the first time, you took off your clothes in conjunction --

A. Yes.

Q. -- with [redacted], correct?

A. Yes.

EXHIBIT E

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

JEFFREY EPSTEIN,

Plaintiff,

v.

SCOTT ROTHSTEIN, individually, BRADLEY J. EDWARDS, individually, and [redacted] individually,

Defendants.
_____/

Complex Litigation, Fla. R. Civ. Pro. 1.201
CASE NO. 50 2009 CA 040800 XXXX MB

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CIRCUIT CIVIL DIVISION

COMPLAINT

Plaintiff, JEFFREY EPSTEIN, (hereinafter "EPSTEIN"), by and through his undersigned attorneys, files this action against Defendants, SCOTT ROTHSTEIN, individually, BRADLEY J. EDWARDS, individually, and [redacted] individually. Accordingly, EPSTEIN states:

SUMMARY OF ACTION

Attorney Scott Rothstein aided by other lawyers and employees at the firm of Rothstein, Rosenfeldt, and Adler, P.A. for personal greed and enrichment, in betrayal of the ethical, legal and fiduciary duties to their own clients and professional obligations to the administration of justice, deliberately engaged in a pattern of racketeering that involved a staggering series of gravely serious obstructions of justice, actionable frauds, and the orchestration and conducting of egregious civil litigation abuses that resulted in profoundly serious injury to Jeffrey Epstein one of several targets of their misconduct

and others. Rothstein and RRA's fraud had no boundary; Rothstein and his co-conspirators forged Federal court orders and opinions. Amongst the violations of law that are the subject of this lawsuit are the marketing of non-existent Epstein settlements and the sanctioning of a series of depositions that were unrelated to any principled litigation purpose but instead designed to discover extraneous private information about Epstein or his personal and business associates (including well-known public figures) in order to defraud investors and support extortionate demands for payment from Epstein. The misconduct featured the filing of legal motions and the pursuit of a civil litigation strategy that was unrelated to the merits or value of their clients' cases and, instead, had as its improper purpose the furthering of Rothstein's misrepresentations and deceit to third party investors. As a result, Epstein was subject to abusive investigatory tactics, unprincipled media attacks, and unsupportable legal filings. This lawsuit is filed and will be vigorously pursued against all these defendants. The Rothstein racketeering enterprise endeavored to compromise the core values of both state and federal justice systems in South Florida and to vindicate the hardworking and honest lawyers and their clients who were adversely affected by the misconduct that is the subject of this Complaint.

Plaintiff reserves the right to add additional defendants – co-conspirators as the facts and evidence is developed.

GENERAL ALLEGATONS

1. This is an action for damages in excess of $15,000.00, exclusive costs, interest, and attorneys' fees.

40. EDWARDS filed amended answers to interrogatories in the state court matters, [redacted] and [redacted], and listed additional high profile witnesses that would allegedly be called at trial, including, but not limited to:

(i) Bill Richardson (Governor of New Mexico, formerly U.S. Representative and Ambassador to the United Nations); and

(ii) Any and all persons having knowledge of EPSTEIN'S charitable, political or other donations;[2]

41. The sole purpose of the scheduling of these depositions or listing high profile friends/acquaintances as potential witnesses was, again, to "pump" the cases to investors. There is no evidence to date that any of these individuals had or have any knowledge regarding RRA's Civil Actions.

42. In furtherance of their illegal and fraudulent scheme against EPSTEIN, ROTHSTEIN, EDWARDS (who either know or should have known) and, at times, [redacted] in her Civil Action against EPSTEIN:

a) Included claims for damages in Jane Doe's federal action in excess of $50,000,000.00 rather than simply alleging the jurisdictional limits.

b) Organized a Jane Doe TV media interview without any legitimate legal purpose other than to "pump" the federal case for potential

[2] These high-profile celebrity "purported" witnesses have no personal knowledge regarding the facts on these "Three Cases", but were being contacted, subpoenaed or listed to harass and intimidate them and Epstein, and to add "star" appeal to the marketing effort of the Ponzi scheme.

investors or to prejudice Epstein's right to a fair trial in Palm Beach County.

c) EDWARDS, Berger and Russell Adler (another named partner in RRA) all attended EPSTEIN's deposition. At that time, outrageous questions were asked of EPSTEIN which had no bearing on the case, but so that the video and questions could be shown to investors.

d) Conducted and attempted to conduct completely irrelevant discovery unrelated to the claims in or subject matter of the Civil Actions for the purpose of harassing and embarrassing witnesses and EPSTEIN and causing EPSTEIN to spend tens of thousands of dollars in unnecessary attorneys' fees and costs defending what appeared to be discovery related to the Civil Actions but was entirely related to the furtherance of the Ponzi scheme.

e) After EDWARDS was recruited and joined RRA in the spring of 2009, the tone and tenor of rhetoric directed to cases against EPSTEIN used by Attorney EDWARDS and Berger changed dramatically in addressing the court on various motions from being substantive on the facts pled to ridiculously inflammatory and sound-bite rich such as the July 31, 2009, transcript when EDWARDS stated to the Court in [redacted] "What the evidence is really going to show is that Mr. Epstein – at least dating back as

far as our investigation and resources have permitted, back to 1997 or '98 – has every single day of his life, made an attempt to sexually abuse children. We're not talking about five, we're not talking about 20, we're not talking about 100, we're not talking about 400, which, I believe, is the number known to law enforcement, we are talking about thousands of children. . . and it is through a very intricate and complicated system that he devised where he has as many as 20 people working underneath him that he is paying well to schedule these appointments, to locate these girls."

f) As an example, EDWARDS filed an unsupportable and legally deficient Motion for Injunction Restraining Fraudulent Transfer of Assets, Appointment of a Receiver to Take Charge of Property of Epstein, and to Post a $15 million Bond to Secure Potential Judgment, in Jane Doe v. Epstein, Case No. 08-CV-80893-Marra/Johnson. The motion was reported in the press as was the ultimate goal (i.e., to "pump" the cases for investor following). However, the Court found "Plaintiff's motion entirely devoid of evidence . . . ", and denied the motion *in toto*.

g) ROTHSTEIN told investors he had another 52 females that he represented, and that Epstein had offered $200 million to resolve,

but that he could settle, confidently, these cases for $500 million, separate and apart from his legal fees.

h) ROTHSTEIN and the Litigation Team knew or should have known that their three (3) filed cases were weak and had minimal value for the following reasons:

(i) [redacted] - testified she never had any type of sex with Epstein; worked at numerous strip clubs; is an admitted prostitute and call girl; has a history of illegal drug use (pot, painkillers, Xanax, Ecstasy); and continually asserted the 5th Amendment during her depositions in order to avoid answering relevant but problem questions for her;

(ii) [redacted] - testified she worked at eleven (11) separate strip clubs, including Cheetah which RRA represented and in which ROTHSTEIN may have owned an interest; and [redacted] also worked at Platinum Showgirls in Boynton Beach, which was the subject of a recent police raid where dancers were allegedly selling prescription painkillers and drugs to customers and prostituting themselves.

(iii) Jane Doe (federal case) seeks $50 million from Epstein. She and her attorneys claim severe

emotional distress as a result of her having voluntarily gone to Epstein's home. She testified that there was never oral, and or sexual intercourse; nor did she ever touch his genitalia. Yet, Jane Doe suffered extreme emotional distress well prior to meeting Epstein as a result of having witnessed her father murder his girlfriend's son. She was required to give sworn testimony in that matter and has admitted that she has lied in sworn testimony. Jane Doe worked at two different strip clubs, including Platinum Showgirls in Boynton Beach.

i) Conducted ridiculous and irrelevant discovery such as subpoenaing records from an alleged sex therapist, Dr. Leonard Bard in Massachusetts, when the alleged police report reflected that EPSTEIN had only seen a chiropractor in Palm Beach named Dr. Bard. No records relating to EPSTEIN existed for this alleged sex therapist, Dr. Bard, and the alleged subpoena for records was just another mechanism to "pump" the cases for investor appeal;

j) Allowed a Second Amended Complaint to be filed on behalf of [redacted] alleging that EPSTEIN forced the minor into "oral sex," yet [redacted] testified that she never engaged in oral, anal, or vaginal

intercourse with EPSTEIN and she had never touched his genitalia.

k) Told investors, as reported in an Associated Press article, that celebrities and other famous people had flown on EPSTEIN'S plane when assaults took place. Therefore, even though none (zero) of RRA's clients claim they flew of EPSTEIN'S planes, the Litigation Team sought pilot and plane logs. Why? Again, to prime the investment "pump" with new money without any relevance to the existing claims made by the RRA clients.

l) After EDWARDS joined RRA, EDWARDS and former Circuit Judge William Berger filed and argued motion to make the Non-Prosecution Agreement (NPA) between Epstein and USAO public. But, RRA, EDWARDS and Berger, and their three clients, already had a copy of the NPA. They knew what it said and they knew the civil provisions in the agreement had no impact whatsoever on the three pending Civil Actions.

The concept behind certain civil provisions in the NPA was to allow an alleged victim to resolve a civil claim with Epstein, maintain her complete privacy and anonymity and move on with her life. As an assistant United States Attorney stated at a hearing in federal court, the NPA was not designed "to hand them a jackpot or a key to a bank."

43. ROTHSTEIN, with the intent and improper motive to magnify his financial gain so continue to fund the fraudulent and illegal investment and/or Ponzi scheme, had EDWARDS demand excessive money from EPSTEIN in the Civil Actions.

44. The actions described in paragraph 42 above herein had no legitimate purpose in pursuing the Civil Actions against EPSTEIN, but rather were meant to further the fraudulent scheme and criminal activity of ROTHSTEIN so that he and others could fraudulently overvalue the settlement value of the existing and non-existent claims against EPSTEIN to potential investors.

45. As a result of the fraudulent investment or (Ponzi) scheme, RRA and its attorneys in the Civil Actions against EPSTEIN may have compromised their clients' interests. ROTHSTEIN and the Litigation Team would have been unable to give unbiased legal counsel because outside investor(s) had been promised a financial interest in the outcome of the actions. Additionally, if a plaintiff received payments from investment monies while her action is pending, this clearly could impact the plaintiff's decision of whether or not to settle the current litigation or shade their testimony (i.e. commit perjury) to gain the greatest return on the investment and to further promote the Ponzi Scheme.

46. The truthfulness of [redacted]s allegations and testimony in [redacted]s state civil action have been severely compromised by the need to seek a multi-million dollar payout to help maintain RRA's massive fraud. Because fictitious settlements of tens of millions of dollars in cases relating to EPSTEIN were represented to "investors" in this Ponzi scheme, RRA and the attorneys in the Civil Actions needed to create a fiction that

included extraordinary damages. However, the actual facts behind her action would never support such extraordinary damages. Therefore, extraordinary measures were undertaken to create an entirely inflated value of her claims against EPSTEIN.

a. Though she held herself out as a "victim" of Epstein, she admitted to having returned over and over again to him despite her current claim of abuse. She has now admitted, under oath, to being a call girl/escort since the age of 15. (in her deposition September 24, 2009 Transcript " [redacted] 280:16-19). She testified "Well, I lived life as a prostitute," (see [redacted] 156:7) and "I am a prostitute when I make money" (see [redacted] 156:12-13). [redacted] admitted her activity with men other than Epstein to making $1,000 a day from prostitution on maybe more than 20 occasions in one year alone ([redacted] 157:11-158:21). [redacted] admitted under oath to keeping a list of amounts she collected from "Johns" in "two or three" lined books including a book of "Psalms" that she obtained from a religious store [redacted] 152:1-14). Under the circumstances, her claim for damages against EPSTEIN, one of [redacted]s many "Johns" during that same period, would be so incredible and certainly not likely to produce the extraordinary settlements promised to "RRA's investors."

47. In April 2007, before she was represented by EDWARDS, and [redacted], [redacted] gave sworn taped recorded testimony to the agents of the FBI. She was represented by a lawyer other than EDWARDS at that statement. She spoke of EPSTEIN in a very positive and friendly terms and directly contradicted the central allegations on which [redacted]s civil action against Epstein is now based. However, once in the hands of

EDWARDS and RRA, [redacted]s story changed dramatically. All of a sudden she wanted to sue EPSTEIN and like other RRA clients, sought tens of millions of dollars.

a. For example, in her sworn statement to the FBI, [redacted] was insistent that "Jeffrey is an awesome man." (p. 21 – FBI); At the conclusion of she stated: "I hope Jeffrey, nothing happens to Jeffrey because he's an awesome man and it really would be a shame. It's a shame that he has to go through this because he's an awesome guy and he didn't do nothing wrong, nothing." (pp. 57-58 - FBI). In fact, [redacted] spoke so highly of EPSTEIN and her interactions with him that the US Attorney's office informed a federal court in July 2008 that the US Attorney could not consider [redacted] a victim.

Yet, by September 24, 2009, the date on which [redacted] began her deposition in her civil action and now represented by RRA and EDWARDS, [redacted] new and very different tale about purported sexual misconduct under the supposed influence of EPSTEIN had been thoroughly rehearsed and her role into the ROTHSTEIN scam was complete. In her deposition in her civil action, [redacted] declared that:

"I, I don't really care about money." (DT 206:8)

"He needs time in jail. He doesn't want to be – this is not right for him to be on the streets living daily . . ." (DT 219:21-23)

"You don't think my whole life I have lived that shitty life because of Jeffrey Epstein?" (DT 222:7-8)

b. In her sworn FBI testimony (pre-EDWARDS and RRA) [redacted] was emphatic that her interactions with Epstein involved no inappropriate sexual touching in any way. In fact, it was exactly the opposite:

Q: Did he at any point kiss you, touch you, show any kind of affection towards you?

A: Never, never. (p. 21 – FBI) . . .

Q: So he never pulled you closer to him in a sexual way?

A: I wish. No, no, never, ever, ever, no, never. Jeffrey is an awesome man, no. (p. 21 - FBI)

Yet, [redacted] filed her second amended complaint in April 2009, after EDWARDS joined RRA, the allegations against EPSTEIN in [redacted]s complaint became even more salacious. In paragraph 12 of [redacted]s Second Amended Complaint, [redacted] alleges among other things, that:

"Jeffrey Epstein coerced, induced, or enticed . . .the then minor Plaintiff to commit various acts of sexual misconduct. These acts included, but were not limited to, fondling and inappropriate and illegal sexual touching of the then minor Plaintiff, forcing or inducing the then minor plaintiff into oral sex or other sexual misconduct..."

c. In her sworn FBI statement (pre-EDWARDS and RRA), [redacted] testified that [redacted] the individual who first brought [redacted] to EPSTEIN's home, told [redacted] "make sure you're 18 because Jeffrey doesn't want any underage girls." (p. 8 - FBI).

Yet at her September, 2009 deposition now represented by EDWARDS and RRA, [redacted] told a very different story:

Q: My question was what did [redacted] ell you to tell Mr. Epstein about your age?

A: She said it didn't matter.

Q: That's your recollection about what she said?

A: Yes, she said – I remember her saying it doesn't matter. Don't worry about it.

(DT 199:20-25)

d. Pre-EDWARDS and RRA, [redacted] estified to the FBI : "I always made sure – I had a fake ID, anyways saying that I was 18." (p. 8 - FBI).

Yet, when questioned about her fake ID at her September 2009 depo, she stated:

Q: And did you have a fake ID?

A: No.

Q: Have you ever had a fake ID?

A: No.

(DT 300:5-8)

e. In her FBI statement (pre-EDWARDS and RRA), [redacted] testified about other[redacted]rought to the Epstein home[redacted]estified that women she brought to EPSTEIN's home were eager for the opportunity and content with their experiences:

> A: None of my girls ever had a problem and they'd call me. They'd beg me, you know, for us to go to Jeffrey's house because they love Jeffrey. Jeffrey is a respectful man. He really is. I mean, and he all thought we were of age always. This is what's so sad about it. (p 30 - FBI).
>
> . . .
>
> Q: Did any of the girls complain about what happened after they left there?
>
> A: No. You asked me that question. No, everybody loved Jeffrey. (p. 44 - FBI)
>
> . . .
>
> A: Every girl that I brought to Jeffrey, they said they were fine with it. and like for example[redacted] – another of RRA's clients in the Civil Actions], a lot of girls begged me to bring them back for the money. And as far as I know, we all had fun there. (p. 45 - FBI)

Yet, with EDWARDS and RRA as her attorneys [redacted] did a "180" at her September, 2009 deposition in saying:

> A: . . . Once they were there, they were scared out of their mind. They did it anyways and some of them walked out and said [redacted] don't ever do this to me again. That was the worst thing that ever happened to me. (DT 170:6-11)
>
> . . . A: And then, a lot of girls weren't comfortable. (DT 171:13)

f. The above represent only a few of the dramatic changes [redacted] made in her testimony prior to her representation by EDWARDS/RRA and after she hired ROTHSTEIN, EDWARDS and RRA.

48. As a result of the fraudulent investment or (Ponzi) scheme, [redacted] may knowingly have compromised her alleged interests in her Civil Action, or committed a fraud on the court.

49. RRA and the Litigation Team took an emotionally driven set of facts involving alleged innocent, unsuspecting, underage females and a Palm Beach Billionaire and sought to turn it into a gold mine. Rather than evaluating and resolving the cases based on the merits (i.e. facts) which included knowledgeable, voluntary and consensual actions by each of the claimants and substantial pre-Epstein psychological and emotional conditions of each of the claimants and substantial sexual experiences pre-Epstein, RRA and the Litigation Team sought through protective orders and objections to block relevant discovery regarding their claimants. They instead forged ahead with discovery the main purpose of which was to pressure Epstein into settling the cases.

Fortunately, their tactics have not been successful. As Magistrate Judge Linnea Johnson wrote in a discovery order dated September 15, 2009 (DE 299 in Federal Case #08-80119) in denying Plaintiffs' Motion for Protective Order:

> "This is his [Epstein's] right. The Record in this case is clear that the childhood of many of the Plaintiffs was marred by instances of abuse and neglect, which in turn may have resulted, in whole or in part, in the damages claimed by the Plaintiffs."

In addition, in an Omnibus Order dated October 28, 2009 (DE 377 in Federal Case #08-80119) Magistrate Judge Linnea Johnson wrote:

> "Here the request at issue goes to the very heart of the Plaintiff's damage claims, requesting not only general information relating to Plaintiff's sexual history, but inquiring as to specific instances wherein Plaintiff received compensation or consideration for sex acts, claim other males sexually assaulted, battered, or abuses her, and/or claim other males committed lewd or lascivious acts on her. As a global matter, Plaintiffs clearly and unequivocally place their sexual history in issue by their allegations that Epstein's actions in this case has negatively affected their relationships by, among other things, "distrust in men," "sexual intimacy problems," "diminished trust," "social problems," " problems in personal relationships," " feeling of stress around men," "premature teenage pregnancy," "antisocial behaviors," and "hyper-sexuality and promiscuity." Considering these allegation, there simply can be no question that Epstein is entitled to know whether Plaintiffs were molested or the subject of other "sexual activity" or "lewd

and lascivious conduct" in order to determine whether there is an alternative basis for the psychological disorders Plaintiffs claim to have sustained, whether Plaintiffs engaged in prostitution or other similar type acts and how certain acts alleged in the Complaint materially affected Plaintiffs' relationships with others or how those acts did not have such an affect on those relationships and/or whether Plaintiffs suffered from the alleged emotional and psychological disorders as a result of other sexual acts prior to the acts alleged in the Complaint. To deny Epstein thus discovery, would be tantamount to barring him from mounting a defense."

50. ROTHSTEIN, EDWARDS and [redacted] actions constitute a fraud upon EPSTEIN as RRA, ROTHSTEIN and the Litigation Team represented themselves to be acting in good faith and with the bests interests of their clients in mind at all times when in reality, they were acting in furtherance of the investment or Ponzi scheme described herein. EPSTEIN justifiably relied to his detriment on the representations of RRA, and Defendants, ROTHSTEIN, EDWARDS and [redacted] as to how he conducted and defended the Civil Actions brought against him.

51. As a direct and proximate result of the fraudulent and illegal investment or Ponzi scheme orchestrated by ROTHSTEIN and as yet other unknown co-conspirators and as a result of the litigation tactics undertaken by the Litigation Team and [redacted] as set forth herein, Plaintiff EPSTEIN has incurred and continues to incur the monetary damages including, but not limited to, having to pay an amount in excess of the Civil Actions' true value as a result of them refusing to settle in that a percentage of any payment by

EXHIBIT F

AO 88 (Rev. 06/09) Subpoena to Appear and Testify at a Hearing or Trial in a Civil Action

UNITED STATES DISTRICT COURT

for the

Southern District of New York

In Re: Application to Quash Subpoenas *Plaintiff*	)	
v.	)	Civil Action No. 10 MB-85
to Daily News, L.P. and George Rush *Defendant*	)	

SUBPOENA TO APPEAR AND TESTIFY AT A HEARING OR TRIAL IN A CIVIL ACTION

To: George Rush c/o New York Daily News Legal Department, Attn: Anne Carrol, 450, West 33rd Street New York, NY 10001

YOU ARE COMMANDED to appear in the United States district court at the time, date, and place set forth below to testify at a hearing or trial in this civil action. When you arrive, you must remain at the court until the judge or a court officer allows you to leave. If you are an organization that is *not* a party in this case, you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about the following matters, or those set forth in an attachment:

Place: United States Courthouse 500 Pearl Street New York, NY	Courtroom No.: Part One
	Date and Time: 05/04/2010 11:00 am

You must also bring with you the following documents, electronically stored information, or objects *(blank if not applicable)*:

The provisions of Fed. R. Civ. P. 45(c), relating to your protection as a person subject to a subpoena, and Fed. R. Civ. P. 45 (d) and (e), relating to your duty to respond to this subpoena and the potential consequences of not doing so, are attached.

Date: 04/30/2010

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail, and telephone number of the attorney representing *(name of party)* Real Party in Interest

Jane Doe , who issues or requests this subpoena, are:

Paul G. Cassell, Esq., Motion for Admission Pro Hac Vice Pending, 332 S. 1400 E., Salt Lake City, UT 84112
[redacted] cassellp@law.utah.edu

Federal Rule of Civil Procedure 45 (c), (d), and (e) (Effective 12/1/07)

(c) Protecting a Person Subject to a Subpoena.

(1) ***Avoiding Undue Burden or Expense; Sanctions.*** A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The issuing court must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney's fees — on a party or attorney who fails to comply.

(2) ***Command to Produce Materials or Permit Inspection.***

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the issuing court for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) ***Quashing or Modifying a Subpoena.***

(A) *When Required.* On timely motion, the issuing court must quash or modify a subpoena that:

(i) fails to allow a reasonable time to comply;

(ii) requires a person who is neither a party nor a party's officer to travel more than 100 miles from where that person resides, is employed, or regularly transacts business in person — except that, subject to Rule 45(c)(3)(B)(iii), the person may be commanded to attend a trial by traveling from any such place within the state where the trial is held;

(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the issuing court may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information;

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party; or

(iii) a person who is neither a party nor a party's officer to incur substantial expense to travel more than 100 miles to attend trial.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(c)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

(ii) ensures that the subpoenaed person will be reasonably compensated.

(d) Duties in Responding to a Subpoena.

(1) ***Producing Documents or Electronically Stored Information.*** These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) ***Claiming Privilege or Protection.***

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

(i) expressly make the claim; and

(ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(e) Contempt. The issuing court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena. A nonparty's failure to obey must be excused if the subpoena purports to require the nonparty to attend or produce at a place outside the limits of Rule 45(c)(3)(A)(ii).