

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

CASE NO.: 502009CA040800XXXXMBAG

JEFFREY EPSTEIN,

Plaintiff(s),

vs.

SCOTT ROTHSTEIN, individually,
BRADLEY J. EDWARDS, individually, and
L.M., individually,

Defendant(s).

**MOTION TO OVERRULE ALL CLAIMS OF PRIVILEGE OTHER THAN CLAIMS OF
FIFTH AMENDMENT PRIVILEGE AND TO IMPOSE SANCTIONS**

BRADLEY J. EDWARDS, by and through his undersigned counsel, moves to overrule all of JEFFREY EPSTEIN'S claims of privilege other than claims based on self-incrimination for failure by EPSTEIN to comply with this Court's Order of March 11, 2013 (attached as Exhibit A) and in support would show:

1. EDWARDS served interrogatories and production requests directed at discovering the ability of counter-defendant, JEFFREY EPSTEIN, to answer in punitive damages for the intentional wrongdoing alleged in the pending counterclaim;
2. EPSTEIN failed to respond to the referenced discovery but attempted to assert untimely objections to avoid his discovery obligations;
3. EDWARDS moved to strike all untimely objections except for the Fifth Amendment privilege objections raised by EPSTEIN, arguing that EDWARDS would be

satisfied to rely upon his ability to comment on EPSTEIN'S Fifth Amendment privilege assertions and to rely upon the ability to draw adverse inferences from such assertions in the context of civil litigation; however, such reliance might be precluded if other valid objections existed with regard to the information being sought;

4. Pursuant to Exhibit A, all of EPSTEIN'S untimely objections were overruled except as to objections based on privilege, and EPSTEIN was ordered to prepare and submit a proper privilege log for the obvious purpose of permitting the validity of his privilege objections to be tested;

5. Rather than complying with this Court's Order, on the day on which the log was to be filed, EPSTEIN reasserted his same privilege objections, this time accompanied by extensive legal argument as to why no privilege log should be filed (see Exhibit B).

EPSTEIN has purposely refused to abide by the Order of this Court and has instead attempted to re-argue his efforts to evade his discovery obligation. Even if addressed on the merits, the arguments presented by EPSTEIN provide no reasonable basis for failing to submit the information required to test the validity of his bare assertions of privilege.

WHEREFORE, EDWARDS moves to overrule all of EPSTEIN'S claims of privilege other than claims based on EPSTEIN'S protection under the Fifth Amendment against self-incrimination and to impose sanctions against EPSTEIN for his past non-compliance with this Court's Order of March 11, 2013, including an award of attorneys' fees and such other relief as the Court deems appropriate under the circumstances described.

Edwards adv. Epstein

Case No.: 502009CA040800XXXXMBAG

Motion to Overrule All Claims of Privilege Other than Claims of Fifth Amendment
Privilege and to Impose Sanctions

I HEREBY CERTIFY that a true and correct copy of the foregoing was sent via E-Serve
to all Counsel on the attached list, this 8th day of April, 2013.



Jack Scarola

Florida Bar No.: 169440

Primary E-mail: jsx@searcylaw.com

Secondary E-mail(s): mep@searcylaw.com

Searcy Denney Scarola Barnhart & Shipley, P.A.

2139 Palm Beach Lakes Boulevard

West Palm Beach, Florida 33409

Phone: (561) 686-6300

Fax: (561) 383-9451

Attorneys for BRADLEY J. EDWARDS

NOT A CERTIFIED COPY

Edwards adv. Epstein

Case No.: 502009CA040800XXXXMBAG

Motion to Overrule All Claims of Privilege Other than Claims of Fifth Amendment
Privilege and to Impose Sanctions

COUNSEL LIST

Jack A. Goldberger, Esquire
jgoldberger@agwpa.com;
smahoney@agwpa.com
Atterbury, Goldberger & Weiss, P.A.
250 Australian Avenue South, Suite 1400
West Palm Beach, FL 33401
Phone: (561)-659-8300
Fax: (561)-835-8691
Attorneys for Jeffrey Epstein

Bradley J. Edwards, Esquire
staff.efile@pathtojustice.com
Farmer, Jaffe, Weissing, Edwards, Fistos &
Lehrman, FL
425 North Andrews Avenue, Suite 2
Fort Lauderdale, FL 33301
Phone: (954) 524-2820
Fax: (954) 524-2822

Fred Haddad, Esquire
Dee@FredHaddadLaw.com;
haddadfm@aol.com
Fred Haddad, P.A.
One Financial Plaza, Suite 2612

Fort Lauderdale, FL 33394
Phone: (954)-467-6767
Fax: (954)-467-3599
Attorneys for Jeffrey Epstein

Marc S. Nurik, Esquire
marc@nuriklaw.com
Law Offices of Marc S. Nurik
One E Broward Blvd., Suite 700
Fort Lauderdale, FL 33301
Phone: (954)-745-5849
Fax: (954)-745-3556
Attorneys for Scott Rothstein

Tonja Haddad Coleman, Esquire
tonja@tonjahaddad.com;
Debbie@Tonjahaddad.com
Tonja Haddad, P.A.
315 SE 7th Street, Suite 301
Fort Lauderdale, FL 33301
Phone: (954)-467-1223
Fax: (954)-337-3716
Attorneys for Jeffrey Epstein

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

CASE NO.: 502009CA040800XXXXMBAG

JEFFREY EPSTEIN,

Plaintiff,

vs.

SCOTT ROTHSTEIN, etc., et al.,

Defendants.

ORDER ON COUNTER-PLAINTIFF'S MOTION TO STRIKE
UNTIMELY OBJECTIONS TO FINANCIAL DISCOVERY

THIS CAUSE came before the Court upon the Counter-Plaintiff's Motion to Strike Untimely Objections to Financial Discovery. The Court heard argument of counsel, reviewed the court file, has reviewed the authorities counsel has cited, has reviewed the discovery along with the objections filed on behalf of the Counter-Defendant. Based upon the foregoing, and after a thorough review of same, it is

CONSIDERED, ORDERED AND ADJUDGED as follows:

The Counter-Defendant's Objections to Discovery other than privilege (including but not limited to constitutional guarantees under the V, VI and XIV Amendments, attorney/client privilege, work product privilege, privacy privilege under the Florida Constitution or any other applicable privilege) are overruled. However, as to any privileges other than a privilege against self-incrimination as guaranteed by the V, VI and XIV Amendments of the United States Constitution, the Counter-Defendant shall file a detailed privilege log outlining the documents and the applicable privilege. The Counter-Defendant shall not be required to list any documents he contends are

privileged pursuant to the V, VI and XIV Amendments. The privilege log as well as more complete responses shall be filed within fifteen (15) days of the date of this Order.

DONE AND ORDERED this 11th day of March, 2013 at West Palm Beach, Palm Beach County, Florida.



DAVID F. CROW
CIRCUIT COURT JUDGE

Copy furnished:

See attached list.

NOT A CERTIFIED COPY

COUNSEL LIST

Jack A. Goldberger, Esquire
jgoldberger@agwpa.com;
smahoney@agwpa.com
Atterbury, Goldberger & Weiss, P.A.
250 Australian Avenue South, Suite 1400
West Palm Beach, FL 33401
Phone: (561)-659-8300
Fax: (561)-835-8691
Attorneys for Jeffrey Epstein

Bradley J. Edwards, Esquire
staff.efile@pathjustice.com
Farmer, Jaffe, Weissing, Edwards, Fistos &
Lehrman, FL
425 North Andrews Avenue, Suite 2
Fort Lauderdale, FL 33301
Phone: (954) 524-2820
Fax: (954) 524-2822

Fred Haddad, Esquire
Dee@FredHaddadLaw.com;
haddadfm@aol.com
Fred Haddad, P.A.
One Financial Plaza, Suite 2612
Fort Lauderdale, FL 33394
Phone: (954)-467-6767
Fax: (954)-467-3599
Attorneys for Jeffrey Epstein

Marc S. Nurik, Esquire
marc@nuriklaw.com
Law Offices of Marc S. Nurik
One E Broward Blvd., Suite 700

Fort Lauderdale, FL 33301
Phone: (954)-745-5849
Fax: (954)-745-3556
Attorneys for Scott Rothstein

Lilly Ann Sanchez, Esquire
lsanchez@thelsfirm.com
The L-S Law Firm
1441 Brickell Avenue, 15th Floor
Miami, FL 33131
Phone: (305)-503-5503
Fax: (305)-503-6801
Attorneys for Jeffrey Epstein

Tonja Haddad Coleman, Esquire
tonja@tonjahaddad.com;
Debbie@Tonjahaddad.com
Tonja Haddad, P.A.
315 SE 7th Street, Suite 301
Fort Lauderdale, FL 33301
Phone: (954)-467-1223
Fax: (954)-337-3716
Attorneys for Jeffrey Epstein

Jack Scarola, Esquire
jsx@searcylaw.com; mep@searcylaw.com
Searcy Denney Scarola Barnhart & Shipley
2139 Palm Beach Lakes Boulevard
West Palm Beach, FL 33409
Phone: 561-686-6300
Fax: 561-383-9451
Attorneys for Bradley J. Edwards

JEFFREY EPSTEIN,

Plaintiff.

vs.

SCOTT ROTHSTEIN, individually,
and BRADLEY J. EDWARDS,
individually.

Defendants.

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

CASE NO. 502009CA040800XXXXMBAG

**PLAINTIFF/COUNTER-DEFENDANT JEFFREY EPSTEIN'S PRIVILEGE LOG
PURSUANT TO COURT ORDER DATED MARCH 11, 2013**

Jeffrey Epstein, by and through his undersigned counsel and pursuant to Rule 1.280 of the *Florida Rules of Civil Procedure* and this Court's Order dated March 11, 2013, hereby files his privilege log in response to Defendant Bradley Edwards's Financial Net Worth Interrogatories (hereinafter "Interrogatories") and Request for Production (Punitive Damages) (hereinafter "Request for Production").

I. INTERROGATORIES

A. Constitutional Privileges (the V, VI and XIV Amendments)

Epstein asserted Constitutional Privileges to Interrogatories Nos. 3 through 13 and 15, including all subparts, specifically stating:

This Interrogatory requires the provision of detailed financial information which communicates statements of fact. *Fisher v. United States*, 425 U.S. 391, 410 (1977). I have a substantial and reasonable basis for concern that these statements of fact that are testimonial in nature could reasonably furnish a "link in the chain of evidence" that could be used to prosecute me in criminal proceedings. *See Hoffman v. United States*, 341 U.S. 479, 486 (1951). I cannot provide answers/responses to questions relating to my financial history and condition without waiving my Fifth, Sixth and Fourteenth Amendment rights as guaranteed by the United States Constitution.

In this Court's March 11, 2013 Order on Edwards's Motion to Strike Epstein's responses to financial net worth discovery as untimely, this Court recognized and refused to find waiver of Epstein's right to assert his Constitutional Privileges under the United States Constitution. Indeed, Epstein has both demonstrated and articulated a "substantial and reasonable basis for concern" that the requested information could "form a link in the chain of evidence" that could be used to prosecute him in criminal proceedings. Specifically, should Edwards be successful in his ardent quest to invalidate the Non-Prosecution Agreement entered into between Epstein and the United States, Epstein could face the prospect of future prosecution. Therefore, Epstein will continue to assert his right to the Constitutional Privileges. *See Piscotti v. Stephens*, 940 So. 2d 1217 (Fla. 4th DCA 2006); *Urbanek v. Urbanek*, 50 So. 3d 1246 (Fla. 4th DCA 2011).

A privilege log must be filed for the purpose of determining the validity of the party's claim of privilege in the requested information. FLA. R.CIV. P. 1.280(b)(5). However, this rule limits the information to be included in the privilege log to that information that is "otherwise discoverable." *Id.* Here, this Court's Order of March 11, 2013 is clear: the information sought by Edwards is not otherwise discoverable as it is protected by Epstein's Fifth Amendment Privilege. Since the determination has already been made by this Court that the information requested in the afore-referenced Interrogatories is protected by Epstein's Fifth Amendment Privilege, the need for the privilege log is obviated. *See Bankers Sec. Ins. Co. v. Symons*, 889 So. 2d 93, 95-96 (Fla. 5th DCA 2004).

Finally, as explained more fully below, because Epstein has asserted his Constitutional Privileges to each and every Interrogatory in which he also asserted

additional statutory privileges, he cannot prepare a traditional privilege log without waiving his Constitutional Privileges. *Id.* To hold otherwise would eviscerate the very protections afforded by the Constitution.

B. Attorney-Client Privilege

Epstein asserted the attorney-client privilege to Interrogatories Nos. 3, 5 - 8, 11 - 13 and 15. Any communication to which the attorney-client privilege attaches is "absolutely immune from disclosure." *United Services Auto. Ass'n. v. Roth*, 859 So. 2d 1270, 1271 (Fla. 4th DCA 2003). In this case, Edwards has brought forth multiple and protracted litigations, spanning the years for which the information is requested. As a result of this, in addition to the ever-present and ongoing threat of criminal prosecution, Epstein has engaged in repeated communications with multiple counsels regarding the information requested in these Interrogatories. Since the attorney-client privilege is a privilege that cannot be overcome, a document by document privilege log is not necessary and a categorical assertion suffices. *Nevin v. Palm Beach County School Bd.*, 958 So. 2d 1003 (Fla. 1st DCA 2007); *Cruz-Govin v. Torres*, 29 So. 3d 393 (Fla. 3d DCA 2010) ("Because petitioners' objection is 'category,' and not 'document,' specific, they were not required to file a privilege log").

Furthermore, the mere production of the information required to be included in the privilege log would constitute communicative testimony itself that is protected from discovery. See *Piscotti v. Stephens*, 940 So. 2d 1217 (Fla. 4th DCA 2006). In such instances where the creation of a privilege log results in the disclosure of the privileged information, as here, the courts have permitted and fashioned alternatives to the traditional privilege log. See e.g., *Nevin v. Palm Beach County School Board*, 958 So.2d

1003, 1008 (Fla. 1st DCA 2007). Significantly, the courts have also permitted less detailed disclosure where the traditional disclosure would reveal the very information sought to be protected. *S.E.C. v. Thrasher*, 1996 WL 125661, at *1 (S.D.N.Y. Mar. 20, 1996). Since a traditional privilege log would require Epstein to disclose the very information he seeks to protect as privileged information, a categorical claim of privilege, as asserted by Epstein, should suffice. See *U.S. v. Gericare Medical Supply Inc.*, 2000 WL 33156442, at *4 (S.D. Ala. Dec. 11, 2000).

C. Work Product Privilege

Epstein asserted the work product privilege to Interrogatories Nos. 4 - 8, 12, 13 and 15. Materials prepared in anticipation of litigation are not subject to discovery. FLA. R.Civ. P. 1.280(b)(3) (2012). Here, the parties have been engaged in protracted litigation spanning not only many years but also several different causes of action during which time Edwards has sought the discovery of Epstein's net worth and corresponding financial information. As a result of this, in addition to the ever-present and ongoing threat of criminal prosecution due to Edwards's active litigation in which he seeks to overturn Epstein's Non-Prosecution Agreement, Epstein has engaged in protracted preparations in anticipation of litigation. Therefore, all of the requested information is protected from discovery under the work product privilege. The only mitigating factor to compel discovery of work product is "a showing that the party seeking discovery 'has need of the materials in the preparation of the case.'" *Federal Exp. Corp. v. Cantway*, 778 So. 2d 1052, 1053 (Fla. 4th DCA 2001). Edwards has not, and is not, able to do this. Since work product privilege cannot be overcome, a categorical assertion suffices. *Nevin v. Palm Beach County School Bd.*, 958 So. 2d 1003 (Fla. 1st DCA 2007); *Cruz-Govin v.*

Torres, 29 So. 3d 393 (Fla. 3d DCA 2010) (“Because petitioners’ objection is ‘category,’ and not ‘document,’ specific, they were not required to file a privilege log”).

Furthermore, the mere production of the information required to be included in the privilege log would constitute communicative testimony itself that is protected from discovery. *See Piscotti v. Stephens*, 940 So. 2d 1217 (Fla. 4th DCA 2006). In such instances where the creation of a privilege log results in the disclosure of the privileged information, as here, the courts have permitted and fashioned alternatives to the traditional privilege log. *See e.g., Nevin v. Palm Beach County School Board*, 958 So.2d 1003, 1008 (Fla. 1st DCA 2007). Significantly, the courts have also permitted less detailed disclosure where the traditional disclosure would reveal the very information sought to be protected. *S.E.C. v. Thrasher*, 1996 WL 125661, at *1 (S.D.N.Y. Mar. 20, 1996). Since a traditional privilege log would require Epstein to disclose the very information he seeks to protect as privileged information, a categorical claim of privilege, as asserted by Epstein, should suffice. *See U.S. v. Gericare Medical Supply Inc.*, 2000 WL 33156442, at *4 (S.D. Ala. Dec. 11, 2000).

D. Accountant-Client Privilege

Epstein asserted the accountant-client Privilege to Interrogatories Nos. 3, 5 - 8, 11 - 13 and 15. In Florida, by statute, communications between an accountant and its client are privileged when those communications are made in the connection with the accounting services provided to the client. § 90.055 FLA. STAT. (2013). “[A]s in all confidential and privileged communications, ‘[t]he justification for the privilege lies not in the fact of communication, but in the interest of the persons concerned that the subject matter should not become public.’” *Savino v. Luciano*, 92 So. 2d 817, 819 (Fla. 1957)

(quoting Judge Learned Hand speaking in *United States v. Krulewitch*, 145 F.2d 76, 79 (2d Cir. 1944)). For the period of the requested Interrogatories, Epstein has engaged in repeated communications with multiple accountants. Epstein has vigorously shielded this information from disclosure to third parties. As such, since disclosure of even the rudimentary information required in the privilege log is enough to waive the privilege, Epstein asserts this privilege categorically. *Nevin v. Palm Beach County School Bd.*, 958 So. 2d 1003 (Fla. 1st DCA 2007); *Cruz-Govin v. Torres*, 29 So. 3d 393 (Fla. 3d DCA 2010) (“Because petitioners’ objection is ‘category,’ and not ‘document,’ specific, they were not required to file a privilege log”).

In such instances where the creation of a privilege log results in the disclosure of the privileged information, as here, the courts have permitted and fashioned alternatives to the traditional privilege log. *See e.g., Nevin v. Palm Beach County School Board*, 958 So.2d 1003, 1008 (Fla. 1st DCA 2007). Significantly, the courts have also permitted less detailed disclosure where the traditional disclosure would reveal the very information sought to be protected. *S.E.C. v. Thrasher*, 1996 WL 125661, at *1 (S.D.N.Y. Mar. 20, 1996). Since a traditional privilege log would require Epstein to disclose the very information he seeks to protect as privileged information, a categorical claim of privilege, as asserted by Epstein, should suffice. *See U.S. v. Gericare Medical Supply Inc.*, 2000 WL 33156442, at *4 (S.D. Ala. Dec. 11, 2000).

E. Florida Uniform Trade Secrets Act

Epstein asserted the privilege afforded to him under the Florida Trade Secrets Act to Interrogatories Nos. 4 - 7, 9, 11 and 15. Under this Act, a trade secret is information, including a technique, that “derives independent economic value... from not being

generally known...by other persons who can obtain economic value from its disclosure or use; and is the subject of efforts... to maintain its secrecy.” § 688.002(4) FLA. STAT. (2012). Trade secrets are privileged from disclosure by section 90.506 of the *Florida Statutes*; to wit:

A person has a privilege to refuse to disclose, and to prevent other persons from disclosing, a trade secret owned by that person if the allowance of the privilege will not conceal fraud or otherwise work injustice...The privilege may be claimed by the person or the person's agent or employee.

§90.506, FLA. STAT. (2012). Epstein, as a financier and philanthropist, developed and utilizes a technique in his financial acumen and strategies that derives independent economic value. If this technique is disclosed, others may obtain economic value from these trade secrets, and as such Epstein has taken immense steps to prevent its disclosure. Therefore, Epstein is claiming his privilege to refuse to disclose the trade secrets in his financial dealings without concealing fraud or otherwise working injustice. Epstein asserts this privilege categorically. *Nevin v. Palm Beach County School Bd.*, 958 So. 2d 1003 (Fla. 1st DCA 2007); *Cruz-Govin v. Torres*, 29 So. 3d 393 (Fla. 3d DCA 2010) (“Because petitioners’ objection is ‘category,’ and not ‘document,’ specific, they were not required to file a privilege log”).

In such instances where the creation of a privilege log results in the disclosure of the privileged information, as here, the courts have permitted and fashioned alternatives to the traditional privilege log. *See e.g., Nevin v. Palm Beach County School Board*, 958 So.2d 1003, 1008 (Fla. 1st DCA 2007). Significantly, the courts have also permitted less detailed disclosure where the traditional disclosure would reveal the very information sought to be protected. *S.E.C. v. Thrasher*, 1996 WL 125661, at *1 (S.D.N.Y. Mar. 20, 1996). Since a traditional privilege log would require Epstein to disclose the very

information he seeks to protect as privileged information, a categorical claim of privilege, as asserted by Epstein, should suffice. *See U.S. v. Gericure Medical Supply Inc.*, 2000 WL 33156442, at *4 (S.D. Ala. Dec. 11, 2000).

F. Privacy Rights of Third Parties

Epstein asserted the privacy rights of third parties pursuant to Art. I, § 12 of the Florida Constitution to Interrogatories Nos.: 4 - 6, 8 - 10, 12 and 15. Article I, §12 states, in relevant part, that “[t]he right of the people to be secure in their persons, houses, papers and effects against communications by any means, shall not be violated.” Art. I, §12 FLA. CONST. “Article I, section 23 of the Florida Constitution specifically provides a constitutional right of privacy broader in scope than the protection provided in the United States Constitution.” *Berkeley v. Eisen*, 699 So. 2d 789, 790 (Fla. 4th DCA 1997). Furthermore, “[c]ourt orders compelling discovery constitute state action that may impinge on constitutional rights, including the constitutional right of privacy.” *Id.* (citing to *Seattle Times Co. v. Rhinehart*, 467 U.S. 20 (1984)). In *Berkeley*, disgruntled investors sued their investment advisor and sought to discover the private information of the investor’s other clients. *Id.* Such information was non-discoverable, as the non-party clients had not given “permission to be identified, or otherwise [take] any steps inconsistent with a reasonable expectation of privacy.” *Id.* Similarly, not one of Epstein’s non-party associates/clients has given permission to be identified or otherwise taken any steps inconsistent with a reasonable expectation of privacy, prohibiting disclosure. *Id.*

In *Winfield v. Div. of Pari-Mutuel Wagering*, 447 So. 2d 544 (Fla. 1985), the Florida Supreme Court stated that “[t]he right of privacy is a fundamental right which we believe demands the compelling state interest standard. This test shifts the burden of

proof to the state to justify an intrusion on privacy.” *Id.* at 547 (holding that “the law in the state of Florida recognizes an individual’s legitimate expectation of privacy in financial [] records.”). Here, Epstein is not legally permitted to waive the right to privacy in financial records for others. As such, where Edwards’s Interrogatories infringe on the legitimate expectation of privacy in a non-party’s financial records, Epstein does not have the ability to waive this right. Epstein asserts this privilege categorically. *Nevin v. Palm Beach County School Bd.*, 958 So. 2d 1003 (Fla. 1st DCA 2007); *Cruz-Govin v. Torres*, 29 So. 3d 393 (Fla. 3d DCA 2010) (“Because petitioners’ objection is ‘category,’ and not ‘document,’ specific, they were not required to file a privilege log”). Since a traditional privilege log would require Epstein to disclose the very information he seeks to protect as privileged information, a categorical claim of privilege, as asserted by Epstein, should suffice. *See U.S. v. Gericare Medical Supply Inc.*, 2000 WL 33156442, at *4 (S.D. Ala. Dec. 11, 2000).

II. REQUESTS FOR PRODUCTION

A. Constitutional Privileges (including the V, VI and XIV Amendments)

Epstein asserted his Constitutional Privileges to Requests for Production Nos. 1 through 23, including all subparts; to wit:

This Request for Production requires the identification of the existence of detailed financial information which communicates statements of fact. *Fisher v. United States*, 425 U.S. 391, 410 (1947). “[T]he act of production itself” may implicitly communicate ‘statements of fact’ that are testimonial in nature.” *United States v. Hubbell*, 530 U.S. 27, 35-36 (2000). I have a substantial and reasonable basis for concern that these statements of fact that are testimonial in nature could reasonably furnish a “link in the chain of evidence” that could be used to prosecute me in criminal proceedings. *See Hoffman v. United States*, 341 U.S. 479, 486 (1951). I cannot provide answers/responses to questions relating to my financial history and condition without waiving my Fifth, Sixth and Fourteenth Amendment rights as guaranteed by the United States

Constitution.

In this Court's March 11, 2013 Order on Edwards's Motion to Strike Epstein's responses to financial net worth discovery as untimely, this Court recognized and refused to find waiver of Epstein's right to assert his Constitutional Privileges under the United States Constitution. Indeed, Epstein has both demonstrated and articulated a "substantial and reasonable basis for concern" that the requested information could "form a link in the chain of evidence" that could be used to prosecute him in criminal proceedings. Specifically, should Edwards be successful his ardent quest to invalidate the Non-Prosecution Agreement entered into between Epstein and the United States, Epstein could face the prospect of future prosecution. Therefore, Epstein will continue assert to his right to the Constitutional Privileges. *See Piscotti v. Stephens*, 940 So. 2d 1217 (Fla. 4th DCA 2006); *Urbanek v. Urbanek*, 50 So. 3d 1246 (Fla. 4th DCA 2011).

A privilege log must be filed for the purpose of determining the validity of the party's claim of privilege in the requested information. FLA. R.CIV. P. 1.280(b)(5). However, this rule limits the information to be included in the privilege log to that information that is "otherwise discoverable." *Id.* Here, this Court's Order of March 11, 2013 is clear: the information sought by Edwards is not otherwise discoverable as it is protected by Epstein's Fifth Amendment Privilege. Since the determination has already been made by this Court that the information requested in the afore-referenced Requests for Production is protected by Epstein's Fifth Amendment Privilege, the need for the privilege log is obviated. *See Bankers Sec. Ins. Co. v. Symons*, 889 So. 2d 93, 95-96 (Fla. 5th DCA 2004).

Finally, as explained more fully below, because Epstein has asserted his

Constitutional Privileges to each and every Request for Production in which he also asserted additional statutory privileges, he cannot prepare a traditional privilege log without waiving his Constitutional Privileges. *Id.* To hold otherwise would eviscerate the very protections afforded by the Constitution.

B. Attorney - Client Privilege

Epstein asserted the Attorney/Client Privilege to Request for Production Nos. 2, 4, 5, 13 -15, 17 - 19, 21 and 23. Any communication to which the attorney-client privilege attaches is “absolutely immune from disclosure.” *United Services Auto. Ass’n. v. Roth*, 859 So. 2d 1270, 1271 (Fla. 4th DCA 2003). In this case, Edwards has brought forth multiple and protracted litigations, spanning the years for which the information is requested. As a result of this, in addition to the ever-present and ongoing threat of criminal prosecution, Epstein has engaged in repeated communications with multiple counsels regarding the information requested in these Requests for Production. Since the attorney-client privilege is a privilege that cannot be overcome, a document by document privilege log is not necessary and a categorical assertion suffices. *Nevin v. Palm Beach County School Bd.*, 958 So. 2d 1003 (Fla. 1st DCA 2007); *Cruz-Govin v. Torres*, 29 So. 3d 393 (Fla. 3d DCA 2010) (“Because petitioners’ objection is ‘category,’ and not ‘document,’ specific, they were not required to file a privilege log”).

Furthermore, the mere production of the documents required to be included in the privilege log would constitute communicative testimony itself that is protected from discovery. *See Piscotti v. Stephens*, 940 So. 2d 1217 (Fla. 4th DCA 2006). In such instances where the creation of a privilege log results in the disclosure of the privileged documents, as here, the courts have permitted and fashioned alternatives to the traditional

privilege log. *See e.g., Nevin v. Palm Beach County School Board*, 958 So.2d 1003, 1008 (Fla. 1st DCA 2007). Significantly, the courts have also permitted less detailed disclosure where the traditional disclosure would reveal the very information sought to be protected. *S.E.C. v. Thrasher*, 1996 WL 125661, at *1 (S.D.N.Y. Mar. 20, 1996). Since a traditional privilege log would require Epstein to disclose the very information he seeks to protect as privileged information, a categorical claim of privilege, as asserted by Epstein, should suffice. *See U.S. v. Gericare Medical Supply Inc.*, 2000 WL 33156442, at *4 (S.D. Ala. Dec. 11, 2000).

C. Work Product Privilege

Epstein asserted the work product privilege to Request for Production Nos. 1, 2, 4, 5, 13 - 15, 17- 19, 21 and 23. Materials prepared in anticipation of litigation are not subject to discovery. FLA. R.Civ. P. 1.280(b)(3) (2012). Here, the parties have been engaged in protracted litigation spanning not only many years but also several different causes of action during which time Edwards has sought the discovery of Epstein's net worth and corresponding financial information. As a result of this, in addition to the ever-present and ongoing threat of criminal prosecution due to Edwards's active litigation in which he seeks to overturn Epstein's Non-Prosecution Agreement, Epstein has engaged in protracted preparations in anticipation of litigation. Therefore, all of the requested information is protected from discovery under the work product privilege. The only mitigating factor to compel discovery of work product is "a showing that the party seeking discovery 'has need of the materials in the preparation of the case.'" *Federal Exp. Corp. v. Cantway*, 778 So. 2d 1052, 1053 (Fla. 4th DCA 2001). Edwards has not, and is not, able to do this. Since work product privilege cannot be overcome, a

categorical assertion suffices. *Nevin v. Palm Beach County School Bd.*, 958 So. 2d 1003 (Fla. 1st DCA 2007); *Cruz-Govin v. Torres*, 29 So. 3d 393 (Fla. 3d DCA 2010) (“Because petitioners’ objection is ‘category,’ and not ‘document,’ specific, they were not required to file a privilege log”).

Furthermore, the mere production of the information required to be included in the privilege log would constitute communicative testimony itself that is protected from discovery. *See Piscotti v. Stephens*, 940 So. 2d 1217 (Fla. 4th DCA 2006). In such instances where the creation of a privilege log results in the disclosure of the privileged information, as here, the courts have permitted and fashioned alternatives to the traditional privilege log. *See e.g., Nevin v. Palm Beach County School Board*, 958 So.2d 1003, 1008 (Fla. 1st DCA 2007). Significantly, the courts have also permitted less detailed disclosure where the traditional disclosure would reveal the very information sought to be protected. *S.E.C. v. Thrasher*, 1996 WL 125661, at *1 (S.D.N.Y. Mar. 20, 1996). Since a traditional privilege log would require Epstein to disclose the very information he seeks to protect as privileged information, a categorical claim of privilege, as asserted by Epstein, should suffice. *See U.S. v. Gericare Medical Supply Inc.*, 2000 WL 33156442, at *4 (S.D. Ala. Dec. 11, 2000).

D. Accountant - Client Privilege

Epstein asserted the Accountant/Client Privilege to Request for Production Nos. 1, 2, 4, 5, 13 - 15, 17 - 19, 21 and 23. In Florida, by statute, communications between an accountant and its client are privileged when those communications are made in the connection with the accounting services provided to the client. § 90.055 FLA. STAT. (2013). “[A]s in all confidential and privileged communications, ‘[t]he justification for

the privilege lies not in the fact of communication, but in the interest of the persons concerned that the subject matter should not become public.” *Savino v. Luciano*, 92 So. 2d 817, 819 (Fla. 1957) (quoting Judge Learned Hand speaking in *United States v. Krulwitch*, 145 F.2d 76, 79 (2d Cir. 1944)). For the period of time spanned by Edwards’s Requests for Production, Epstein has engaged in repeated communications with multiple accountants. Epstein has vigorously shielded this information from disclosure to third parties. As such, since disclosure of even the rudimentary information required in the privilege log is enough to waive the privilege, Epstein asserts this privilege categorically. *Nevin v. Palm Beach County School Bd.*, 958 So. 2d 1003 (Fla. 1st DCA 2007); *Cruz-Govin v. Torres*, 29 So. 3d 393 (Fla. 3d DCA 2010) (“Because petitioners’ objection is ‘category,’ and not ‘document,’ specific, they were not required to file a privilege log”).

In such instances where the creation of a privilege log results in the disclosure of the privileged information, as here, the courts have permitted and fashioned alternatives to the traditional privilege log. *See e.g., Nevin v. Palm Beach County School Board*, 958 So.2d 1003, 1008 (Fla. 1st DCA 2007). Significantly, the courts have also permitted less detailed disclosure where the traditional disclosure would reveal the very information sought to be protected. *S.E.C. v. Thrasher*, 1996 WL 125661, at *1 (S.D.N.Y. Mar. 20, 1996). Since a traditional privilege log would require Epstein to disclose the very information he seeks to protect as privileged information, a categorical claim of privilege, as asserted by Epstein, should suffice. *See U.S. v. Gericare Medical Supply Inc.*, 2000 WL 33156442, at *4 (S.D. Ala. Dec. 11, 2000).

E. The Florida Uniform Trade Secrets Act

Epstein asserted the privilege afforded to him under the Florida Trade Secrets Act to Request for Production No. 23. Under this Act, a trade secret is information, including a technique, that “derives independent economic value... from not being generally known...by other persons who can obtain economic value from its disclosure or use; and is the subject of efforts... to maintain its secrecy.” § 688.002(4) FLA. STAT. (2012). Trade secrets are privileged from disclosure by section 90.506 of the *Florida Statutes*; to wit:

A person has a privilege to refuse to disclose, and to prevent other persons from disclosing, a trade secret owned by that person if the allowance of the privilege will not conceal fraud or otherwise work injustice...The privilege may be claimed by the person or the person’s agent or employee.

§90.506, FLA. STAT. (2012). Epstein, as a financier and philanthropist, developed and utilizes a technique in his financial acumen and strategies that derives independent economic value. If this technique is disclosed, others may obtain economic value from these trade secrets, and as such Epstein has taken immense steps to prevent its disclosure. Therefore, Epstein is claiming his privilege to refuse to disclose the trade secrets in his financial dealings without concealing fraud or otherwise working injustice. Epstein asserts this privilege categorically. *Nevin v. Palm Beach County School Bd.*, 958 So. 2d 1003 (Fla. 1st DCA 2007); *Cruz-Govin v. Torres*, 29 So. 3d 393 (Fla. 3d DCA 2010) (“Because petitioners’ objection is ‘category,’ and not ‘document,’ specific, they were not required to file a privilege log”).

In such instances where the creation of a privilege log results in the disclosure of the privileged information, as here, the courts have permitted and fashioned alternatives to the traditional privilege log. *See e.g., Nevin v. Palm Beach County School Board*, 958

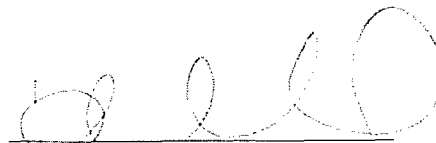
So.2d 1003, 1008 (Fla. 1st DCA 2007). Significantly, the courts have also permitted less detailed disclosure where the traditional disclosure would reveal the very information sought to be protected. *S.E.C. v. Thrasher*, 1996 WL 125661, at *1 (S.D.N.Y. Mar. 20, 1996). Since a traditional privilege log would require Epstein to disclose the very information he seeks to protect as privileged information, a categorical claim of privilege, as asserted by Epstein, should suffice. See *U.S. v. Gericare Medical Supply Inc.*, 2000 WL 33156442, at *4 (S.D. Ala. Dec. 11, 2000).

F. Privacy Rights of Third Parties

Epstein asserted the privacy rights of third parties pursuant to Art. 1, Sect. 12 of the *Florida Constitution* to Request for Production Nos. 2 - 22. Article 1, §12 states, in relevant part, that “[t]he right of the people to be secure in their persons, houses, papers and effects against communications by any means, shall not be violated.” Art. 1, § 12 FLA. CONST. “Article 1, section 23 of the Florida Constitution specifically provides a constitutional right of privacy broader in scope than the protection provided in the United States Constitution.” *Berkeley v. Eisen*, 699 So. 2d 789 (Fla. 4th DCA 1997). Furthermore, “[c]ourt orders compelling discovery constitute state action that may impinge on constitutional rights, including the constitutional right of privacy.” *Id.* at 791 (citing to *Seattle Times Co. v. Rhinehart*, 467 U.S. 20 (1984)). In *Berkeley*, disgruntled investors sued their investment advisor and sought to discover the private information of the investor’s other clients. *Id.* Such information was non-discoverable, as the non-party clients had not given “permission to be identified, or otherwise [take] any steps inconsistent with a reasonable expectation of privacy.” *Id.* Similarly, not one of Epstein’s non-party associates/clients has given permission to be identified or otherwise taken any

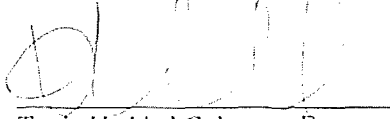
steps inconsistent with a reasonable expectation of privacy, prohibiting disclosure. *Id.*

In *Winfield v. Div. of Pari-Mutuel Wagering*, 447 So. 2d 544 (Fla. 1985), the Florida Supreme Court stated that “[t]he right of privacy is a fundamental right which we believe demands the compelling state interest standard. This test shifts the burden of proof to the state to justify an intrusion on privacy.” *Id.* at 547 (holding that “the law in the state of Florida recognizes an individual’s legitimate expectation of privacy in financial [] records.”). Here, Epstein is not legally permitted to waive the right to privacy in financial records for others. As such, where Edwards’s Interrogatories infringe on the legitimate expectation of privacy in a non-party’s financial records, Epstein does not have the ability to waive this right. Epstein asserts this privilege categorically. *Nevin v. Palm Beach County School Bd.*, 958 So. 2d 1003 (Fla. 1st DCA 2007); *Cruz-Govin v. Torres*, 29 So. 3d 393 (Fla. 3d DCA 2010) (“Because petitioners’ objection is ‘category,’ and not ‘document,’ specific, they were not required to file a privilege log”). Since a traditional privilege log would require Epstein to disclose the very information he seeks to protect as privileged information, a categorical claim of privilege, as asserted by Epstein, should suffice. *See U.S. v. Gericare Medical Supply Inc.*, 2000 WL 33156442, at *4 (S.D. Ala. Dec. 11, 2000).



Tonja Haddad Coleman, Esq.
Fla. Bar No.: 0176737
LAW OFFICES OF TONJA HADDAD, PA
315 SE 7th Street
Suite 301
Fort Lauderdale, Florida 33301
954.467.1223
954.337.3716 (facsimile)
Tonja@tonjahaddad.com

WE HEREBY CERTIFY that a true and correct copy of the foregoing was served upon all parties listed below, via Electronic Service, this March 26, 2013.


Tonja Haddad Coleman, Esq.
Fla. Bar No.: 0176737

Jack Scarola, Esq.
Searcy Denney Scarola et al.
2139 Palm Beach Lakes Blvd.
West Palm Beach, FL 33409

Jack Goldberger, Esq.
Atterbury, Goldberger, & Weiss, PA
250 Australian Ave. South
Suite 1400
West Palm Beach, FL 33401

Marc Nurik, Esq.
1 East Broward Blvd.
Suite 700
Fort Lauderdale, FL 33301

Bradley J. Edwards, Esq.
Farmer Jaffe Weissing Edwards Fistos Lehrman
425 N Andrews Avenue
Suite 2
Fort Lauderdale, Florida 33301

Fred Haddad, Esq.
1 Financial Plaza
Suite 2612
Fort Lauderdale, FL 33301

Tonja Haddad Coleman, Esq.
Tonja Haddad, P.A.
315 S.E. 7th Street
Suite 301
Fort Lauderdale, Florida 33301