UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

JANE DOE NO. 2, CASE NO.: 08-CV-80119-MARRA/JOHNSON

Plaintiff,

vs.

JEFFREY EPSTEIN,

Defendant.
_____/

JANE DOE NO. 3, CASE NO.: 08-CV-80232-MARRA/JOHNSON

Plaintiff,

vs.

JEFFREY EPSTEIN,

Defendant.
_____/

JANE DOE NO. 4, CASE NO.: 08-CV-80380-MARRA/JOHNSON

Plaintiff,

vs. JEFFREY EPSTEIN,

Defendant.
_____/

JANE DOE NO. 5, CASE NO.: 08-CV-80381-MARRA/JOHNSON

Plaintiff,

vs.

JEFFREY EPSTEIN,

Defendant.
_____/

JANE DOE NO. 6, CASE NO.: 08-80994-CIV-MARRA/JOHNSON

Plaintiff,

vs.

JEFFREY EPSTEIN,

Defendant.
_____/

JANE DOE NO. 7, CASE NO.: 08-80993-CIV-MARRA/JOHNSON

Plaintiff,

vs.

JEFFREY EPSTEIN,

Defendant.
_____/

C.M.A., CASE NO.: 08-80811-CIV-MARRA/JOHNSON

Plaintiff,

vs.

JEFFREY EPSTEIN,

Defendant.
_____/

JANE DOE, CASE NO.: 08- 80893-CIV-MARRA/JOHNSON

Plaintiff,

vs.

JEFFREY EPSTEIN et al,

Defendants.
_____/

DOE II, CASE NO.: 09- 80469-CIV-MARRA/JOHNSON

Plaintiff,

vs.

JEFFREY EPSTEIN et al,

Defendants.
_____/

JANE DOE NO. 101, CASE NO.: 09- 80591-CIV-MARRA/JOHNSON

Plaintiff,

vs.

JEFFREY EPSTEIN,

Defendant.
_____/

JANE DOE NO. 102 CASE NO.: 09-80656-CIV-MARRA/JOHNSON

Plaintiff,

vs.

JEFFREY EPSTEIN,

Defendant.
_____/

ORDER

THIS CAUSE is before the Court on Plaintiff's Motion to Compel Answers to Interrogatories and Production of Documents (D.E. #57). For the following reasons said

Motion is granted in part and denied in part as follows.

In this case, which has been consolidated for purposes of discovery, Plaintiffs are former under-age girls who allege they were sexually assaulted by Defendant, Jeffrey Epstein ("Epstein"), at his Palm Beach mansion home. The scheme is alleged to have taken place over the course of several years in or around 2004-2005, when the girls in question were approximately 16 years of age. As part of this scheme, Epstein, with the help of his assistant Sarah Kellen, allegedly lured economically disadvantaged minor girls to his homes in Palm beach, New York and St. Thomas, with the promise of money in exchange for a massage. Epstein purportedly transformed the massage into a sexual assault. The three-count Complaint alleges sexual assault and battery (Count I), intentional infliction of emotional distress (Count II), and, coercion and enticement to sexual activity in violation of 18 U.S.C. §2422 (Count III).

In 2008, Epstein entered into a Non-Prosecution Agreement with the United States Attorney General's Office for the Federal Southern District of Florida and the State Attorney's Office for Palm Beach County. Under the terms of the Non-Prosecution Agreement, any criminal prosecution against Epstein is deferred as long as he abides by the certain terms and conditions contained therein. If at any time the United States Attorney's Office has reason to believe Epstein is in breach of the Agreement, it need only provide Epstein's counsel with notice of the breach and then move forward with Epstein's prosecution. Accordingly, the undersigned would agree with Epstein's statement at page 4 of its Response, that the fact there exists a Non-Prosecution Agreement does not mean that Epstein is free from future criminal prosecution, and that in fact, "the threat of prosecution is real, substantial, and present." Id.

By this Motion, Plaintiff seeks to compel answers to certain interrogatories and requests for production that were propounded December 9, 2008. Defendant has responded by asserting several objections, the primary one of which is an assertion of his Fifth Amendment privilege.

The Fifth Amendment serves as a guarantee against testimonial compulsion and provides, in relevant part, that "[n]o person...shall be compelled in any Criminal Case to be a witness against himself." Id. In practice, the Fifth Amendment's privilege against self-incrimination "permits a person not to answer official questions put to him in any other proceeding, civil or criminal, formal or informal, where the answers might incriminate him in future criminal proceedings." Edwin v. Price, 778 F.2d 668, 669 (11th Cir. 1985)(citing Lefkowitz v. Turley, 414 U.S. 70, 77 (1973)). The privilege is accorded "liberal construction in favor of the right it was intended to secure," Hoffman v. United States, 341 U.S. 479, 486 (1951), and extends not only to answers that would in themselves support a criminal conviction, but extends also to those answers which would furnish a link in the chain of evidence needed to prosecute the claimant for a crime. Id.; Blau v. United States, 340 U.S. 159 (1950). Thus, information is protected by the privilege not only if it would support a criminal conviction, but also in those instances where "the responses would merely 'provide a lead or clue' to evidence having a tendency to incriminate." United States v. Neff, 615 F.2d 1235, 1239 (9th Cir.), cert. denied, 447 U.S. 925 (1980).

The Fifth Amendment's privilege against self-incrimination comes into play only in those instances where the witness has "reasonable cause to apprehend danger from a direct answer." Hoffman, 341 U.S. at 486 (citing Mason v. United States, 244 U.S. 362, 365 (1917)). "The claimant must be 'confronted by substantial and 'real,' and not merely trifling

or imaginary, hazards of incrimination." United States v. Apfelbaum, 445 U.S. 115, 128 (1980).

When the Fifth Amendment privilege is raised as a bar to discovery, a blanket refusal to answer questions or to produce documents is improper. Anglada v. Sprague, 822 F.2d 1035, 1037 (11th Cir. 1987). Instead, the privilege must be asserted in response to a particular question, and in each instance the burden is on the claimant to justify invocation of the privilege. Id. Once a particularized showing has been made, "[i]t is for the court to decide whether a witness' silence is justified and to require him to answer if it clearly appears to the court that the witness asserting the privilege is mistaken as to its validity." In re Morganroth, 718 F.2d 161, 166-67 (6th Cir. 1983). In making this determination the judge is instructed to view the facts and evidence presented on a case-by-case basis, and "must be governed as much by his perception of the peculiarities of the case, as by the facts actually in evidence." Hoffman, 341 U.S. at 487.

The law is well established that the Fifth Amendment privilege may not apply to specific documents "even though they contain incriminating assertions of fact or belief, because the creation of those documents was not 'compelled' within the meaning of the privilege." United States v. Hubbell, 530 U.S. 27, 35-36 (2000). However, in certain instances, "'the act of production' itself may implicitly communicate 'statements of fact.'" Id. For this reason the Fifth Amendment privilege also encompasses the circumstance where the act of producing documents in response to a subpoena or production request has a compelled testimonial aspect Id. Thus, in those instances where the existence and/or location of the requested documents are unknown, or where production would "implicitly authenticate" the requested documents, the act of producing responsive

documents is considered testimonial and is protected by the Fifth Amendment. In re Grand Jury Subpoena, 1 F.3d 87, 93 (2d Cir. 1993); see also Fisher v. United States, 425 U.S. 391, 410 (1976)(issue expressed as whether compliance with a document request or subpoena "tacitly conceded" the item's authenticity, existence or possession by the defendant).

The Court begins with an analysis of the Fifth Amendment privilege as applied to each request. In the event the Court determines that a certain request does not infringe upon Epstein's Fifth Amendment privilege, Epstein's additional objections to that request shall be addressed. Where appropriate, the Court looks to Epstein's Response Memorandum for more particularized objections, rather than relying solely on Epstein's objections as initially stated, which in some cases were less specific in nature. The Court also notes Plaintiff's concession, stated at pages 3 and 5 of her Motion, that the act of producing items in response to Production Request Nos. 9, 12-13 and responding to Interrogatory No. 9, may implicate the Fifth Amendment. Finally, the Court approves Epstein's decision not to provide a detailed privileged log, in that it is reasonable under the circumstances to believe that in compelling production of same, the Court would in essence be compelling testimony to which Epstein's constitutional protections might apply. As such, the Court agrees with Epstein that it makes judicial sense to decide the constitutional issues first, before deciding the additional discovery request objections.

INTERROGATORIES

Epstein's assertion of the Fifth Amendment as it relates to Interrogatories 3, 4, 5, 6, 13, 14, 15, 16 and 17 is sustained and Plaintiff's Motion in this regard is denied. Interrogatories 3-6 ask Epstein to identify anyone who gave or were asked to give him

massages. Epstein argues, and this Court agrees, that any answer to these questions involve compelled statements that could reasonably furnish a link in the chain of evidence needed to prosecute Epstein in future criminal proceedings or even support a criminal conviction. Interrogatory No. 15 seeks information relating to alleged sexual abuse or misconduct on a minor. On its face, this interrogatory seeks incriminating evidence which Epstein is entitled to protect by asserting his Fifth Amendment privilege against self incrimination. Interrogatory No. 16 is a contention interrogatory seeking the facts upon which Epstein relies to support each of his pleading allegation denials and for each affirmative defense. As Epstein correctly observes, forcing him to answer this interrogatory unconstitutionally places him in the position of being compelled to testify as to his version of the facts, and, in asserting affirmative defenses, being compelled to admit to Plaintiff's version of the facts.

Interrogatories 13, 14 and 17 ask Epstein to identify any persons or witnesses who have knowledge of the events in question, or who are in possession or control of any photos, videos, written statements, etc. pertaining to the events in question. Clearly these interrogatories, all of which relate to claims of sexual abuse and exploitation of a minor, implicate the Fifth Amendment, in that by requiring Epstein to list such persons or witnesses, Epstein is being forced to incriminate himself in the commission of crimes.

Epstein's assertion of the Fifth Amendment as it relates to Interrogatories 1, 2, 9 and 12, is likewise sustained and Plaintiff's Motion in this regard denied. While these interrogatories ask for general, identification-type information, which on their face may not appear to infringe upon or otherwise implicate Epstein's rights under the Fifth Amendment, based on the particularized showing made by Epstein in his Response Memorandum, the

facts alleged in the Complaints, and the undersigned's knowledge of the cases, it is clear they involve compelled statements that would furnish a link in the chain of evidence needed to convict him of a crime, allowing Epstein to assert his Fifth Amendment privilege.

Interrogatory No. 1 asks Epstein to identify all employees who performed work or services inside his Palm Beach residence and Interrogatory No. 2 asks Epstein to identify all employees not identified in Interrogatory No. 1 who at any time came to Defendant's Palm Beach residence. Interrogatories 9 and 12 are similar in nature requesting information regarding the identity of persons providing transport services (Interrogatory 9), and a list of Epstein's employee's telephone numbers (Interrogatory 12).

Epstein raises the same general objections to each of these interrogatories, referring to the allegations in the Complaints of sexual abuse, exploitation and battery, along with the alleged scheme of recruiting girls to come to his Palm Beach mansion to give him "massages," and then states that requiring him to identify his employees, his drivers, and his employee's telephone numbers, "would be a link in the chain of evidence needed to convict him of a crime." Then, in his Response Brief, Epstein goes further and makes a particularized showing for each of the subject interrogatories identified above explaining how answering these interrogatories present a real and substantial danger of self incrimination. See Epstein's Resp. Brief, pp. 18-20.

As noted previously, the Fifth Amendment privilege against self incrimination is accorded "liberal construction," Hoffman, 341 U.S. at 486, and extends not only to answers that would in themselves support a criminal conviction, but extends also to those answers which would furnish a link in the chain of evidence needed to prosecute the claimant for a crime. Id. Thus to be afforded protection, the answer need not necessarily be enough

to support a criminal conviction; it is enough if the response merely provides a lead or clue to evidence having a tendency to incriminate. Neff, 615 F.2d at 1239. In asserting his Fifth Amendment privilege, Epstein expresses a concern that employees who either worked at his Palm Beach residence or visited his Palm Beach residence during the relevant time period, or drivers who drove himself or others to or from his Palm Beach residence would be privy to evidence that would implicate Epstein in a crime. Given the allegations raised in the Complaints and the elements required to convict Epstein of a crime, and considering the background facts underlying the case, these concerns are reasonable, real and not unjustified. As such, the subject requests, which essentially ask Epstein to identify potential witnesses against him, are subject to Epstein's assertion of his Fifth Amendment privilege against self incrimination.

In sustaining Epstein's Fifth Amendment privilege, the Court has considered the facts alleged in the Complaints, the elements needed to convict Epstein of a crime, the particularized showing made in Epstein's Response Brief, and drawn upon the Court's knowledge of the cases at issue. On this basis the Court finds the privilege raised as to these interrogatories valid, and asserted by Epstein only with reference to "genuinely threatening questions." United States v. Goodwin, 625 F.2d 693, 701 (5th Cir. 1980). The danger Epstein faces by being forced to testify in this instance is "substantial and real, and not merely trifling or imaginary" as required. Apfelbaum, 445 U.S. 128. Accordingly, finding the above-mentioned interrogatories involve compelled statements that would furnish a link in the chain of evidence needed to convict Epstein of a crime, the Court finds Epstein's Fifth Amendment privilege claim validly asserted.

When one considers the nature of the allegations, to wit, a scheme and plan of

sexual misconduct carried out at Epstein's various residences, and that at least one of Epstein's employees, Sarah Kellen, is alleged to have aided Epstein in his alleged sexual exploitation, then it is entirely reasonable for Epstein to assert that forcing him to testify as to anyone who came or went to his Palm Beach mansion or was employed at his Palm Beach mansion (Interrogatories 1-2), the identity of persons providing transport services (Interrogatory No. 9), and his employee's telephone numbers (Interrogatory 12), may provide a lead or clue to evidence tending to incriminate him. Not only would such compelled testimony self-incriminate him on the elements required to establish a criminal violation, and thus serve as a link in the chain of evidence needed to prosecute Epstein for a crime, but in some cases serve to incriminate him by asking Epstein to identify potential witnesses against him. Accordingly, Epstein's Fifth Amendment privilege as it relates to Interrogatories 1, 2, 9 and 12 is sustained and Plaintiff's Motion in this regard is rejected.

The same objections raised above with respect to Interrogatories 1, 2, 9 and 12 have been raised by Epstein to justify his refusal to answer Interrogatories 7 (dates of Florida travel), 8 (identification of health care providers), and 11 (identification of Epstein's telephone numbers). These Interrogatories ask for general, identification-type information, which neither on their face nor by implication implicate Epstein's rights under the Fifth Amendment. In this regard, the Court is left with only Epstein's blanket assertion of the privilege in which he claims that requiring him to identify his heath care providers, his various telephone numbers and his dates of Florida travel, "would be a link in the chain of evidence needed to convict him of a crime." See Epstein's Resp. Brief, pp. 18-20. Unfortunately for Epstein, this objection is so general and sweeping in nature it amounts to a blanket assertion of the privilege. In these circumstances, where a blanket assertion

of the privilege is asserted, the Court is required to make a "particularized inquiry," and sustain only those privileges asserted as to "genuinely threatening questions." United States v. Goodwin, 625 F.2d 693, 701 (5th Cir. 1980).

Here, Epstein's objections fall well short of the showing required of demonstrating that requiring him to answer these interrogatories would realistically and necessarily furnish a link in the chain of evidence needed to prove a crime against him. Discovery requests that seek background information on events and experiences of the witness for which he cannot realistically or genuinely be expected to be charged with a crime are not subject to Fifth Amendment protection. See Krause v. Rhodes, 390 F.Supp. 1070, 1071-72 (N.D. Ohio 1974). In summary, Epstein has failed to sustain his burden of making a particularized showing to support his claim that forcing him merely to identify his health care providers, his dates of travel and his telephone numbers, would present a substantial and real threat of criminal prosecution.

As for Epstein's non-privileged based objections, such as relevance, over breadth, over burdensomeness, and alleged HIPAA protection, said objections are also rejected. Rule 33 of the Federal Rules of Civil Procedure, allows any party to serve on any other party written interrogatories concerning matters within the scope of Federal Rule Civil Procedure 26(b). The scope of discovery under Rule 26(b) is broad: "[p]arties may obtain discovery regarding any matter, not privileged, which is relevant to the claim or defense of any party involved in the pending action." Id. Relevant information need not be admissible at trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence." Id.; see also Hickman

v. Taylor, 329 U.S. 495, 507-508 (1947); Farnsworth v. Proctor and Gamble Co., 758 F.2d 1545, 1547 (11th Cir. 1985)(the Federal Rules of Civil Procedure "strongly favor full discovery whenever possible"); Canal Authority v. Froehlke, 81 F.R.D. 609, 611 (M.D. Fla. 1979).

Thus, under Rule 26, relevancy is "construed broadly to encompass any matter that bears on, or that reasonably could lead to another matter that could bear on any issue that is or may be in the case." Oppenheimer Fund, Inc. v. Sanders, 437 U.S. 340, 352 (1978). Discovery is not limited to the issues raised by the pleadings because "discovery itself is designed to help define and clarify the issues." Id. at 352. In short, information can be relevant and therefore discoverable, even if not admissible at trial, so long as the information is reasonably calculated to lead to the discovery of admissible evidence. Dunbar v. United States, 502 F.2d 206 (5th Cir. 1974).

Under Fed. R. Civ. P., 26(b)(1) a court may limit discovery of relevant material if it determines that the discovery sought is unreasonably cumulative or duplicitive, or obtainable from some other source that is more convenient, less burdensome, or less expensive, or the burden or expense of the proposed discovery outweighs the likely benefit. Id. The party resisting discovery has a heavy burden of showing why the requested discovery should not be permitted. Rossbach v. Rundle, 128 F.Supp.2d 1348, 1354 (S.D. Fla. 2000) (“The onus is on the party resisting discovery to demonstrate specifically how the objected-to information is unnecessary,

unreasonable or otherwise unduly burdensome."); Dunkin Donuts, Inc. v. Mary's Donuts, Inc., 2001 WL 34079319 (S.D. Fla. 2001)("the burden of showing that the requested information is not relevant to the issues in the case is on the party resisting discovery")(citation omitted); Gober v. City of Leesberg, 197 F.R.D. 519, 521 (M.D. Fla. 2000)("The party resisting production of information bears the burden of establishing lack of relevancy or undue burden in supplying the requested information").

To meet this burden, the party resisting discovery must demonstrate specifically how the objected-to request is unreasonable or otherwise unduly burdensome. See Fed. R. Civ. P. 33(b)(4); Panola Land Buyers Ass'n v. Shuman, 762 F.2d 1550, 1559 (11th Cir. 1985); Rossbach, 128 F.Supp.2d at 1353. Thus, to even merit consideration, "an objection must show specifically how a discovery request is overly broad, burdensome or oppressive, by submitting evidence or offering evidence which reveals the nature of the burden." Coker v. Duke & Co., 1777 F.R.D. 682, 686 (M.D. Ala. 1998). Once the resisting party meets its burden, the burden shifts to the moving party to show the information is relevant and necessary. Gober, 197 F.R.D. at 521; see also Hunter's Ridge Golf Co. Inc. v. Georgia-Pacific Corp., 233 F.R.D. 678, 680 (M.D. Fla. 2006).

Here, the information requested concerns Epstein's dates of travel, health care provider identification, and list of phone numbers. This information is relevant in that it may lead to evidence to support Plaintiff's claims that Epstein lured her to

his mansion for the purpose of sexual exploitation. Substantively, the interrogatories are narrowly tailored to discover only information that is directly relevant to Plaintiff's claims and/or Epstein's defenses. Epstein's HIPAA objections are unfounded as the request seeks only the **identification** of Epstein's health care providers.[1]

Finally, the requested ten-year time frame is not overly broad considering the allegation that Epstein has a psychosexual condition, which, if true, could very well have existed most, if not all, of his adult life. The Court agrees with Epstein, however, that Plaintiff's allegation of child abuse, does not alone provide Plaintiff with carte blanche access to a list of ALL of Defendant's medical providers. Instead, the undersigned limits the interrogatory to a request for "identification, by name, title and address and/or telephone number, of all of Epstein's psychologists, psychiatrists, therapists, or mental health counselors for the last ten years." Accordingly, except as mentioned above with respect to health care professionals, the Court finds Epstein's objections to Interrogatories 7, 8 and 12 unfounded and orders Epstein to provide responses to same in accordance with the afore-stated terms, within ten (10) days from the date hereof.

PRODUCTION REQUESTS

As noted previously, the Fifth Amendment privilege may not apply to specific

[1] In addressing Interrogatory 8, both parties refer to the need for the Court to hold an *in camera* inspection of the documents to determine, as to each document, whether Fla. Stat. §39.204 is applicable. The request at issue, however, is an INTERROGATORY request, not a document request, and therefore these concerns are inapplicable.

documents "even though they contain incriminating assertions of fact or belief, because the creation of those documents was not 'compelled' within the meaning of the privilege." Hubbell, 530 U.S. at 35-36. Accordingly, a party cannot avoid discovery merely because demanded documents contain incriminating evidence, "whether written by others or voluntarily prepared by himself." Id. In certain instances, however, "'the act of production' itself may implicitly communicate 'statements of fact.'" Id. For this reason the Fifth Amendment privilege also encompasses the circumstance where the act of producing documents in response to a subpoena or production request has a compelled testimonial aspect Id. Thus, in those instances where the existence and/or location of the requested documents are unknown, or where production would "implicitly authenticate" the requested documents, the act of producing responsive documents is considered testimonial and is protected by the Fifth Amendment. In re Grand Jury Subpoena, 1 F.3d 93.

In response to Plaintiff's Requests for Production, Epstein has asserted an identical "blanket" objection to each of the 24 requests, stating essentially that while he initially intended to produce all responsive relevant documents, he has been advised by his attorneys to assert his "federal constitutional rights under the fifth, Sixth and Fourteenth Amendments" and refuse to produce them. In his Response Brief Epstein went further and explained that as to each of the production requests at issue, "the act of production itself involves a testimonial compulsion" in that, "[i]n responding to each request, Epstein would be compelled to admit that such documents existed, admit that the documents were in his possession or control, and were authentic. In other words, the very act of production of the category of documents requested would implicitly communicate "statements of fact." Epstein's Resp. Brief, p.22. According to Epstein, the "act of production might not only

provide evidence to support a conviction, but also a link in the chain of evidence for prosecution. Such compulsion to produce is the same as being compelled to testify." Id.

The documents requested fall into several different categories consisting of agreements with the U.S. Attorney and State Attorney, and documents exchanged between the Defendant and the U.S. Attorney (Requests 1-4), telephone records (Requests 5-6), videos and photos of Epstein's Palm Beach residence (Request 7), documents relating to Plaintiff Jane Doe (Request 8), air travel records (Request 10), documents relating to model agencies (Request 11), correspondence with other witnesses (Request 14-17, 19), social networking documents (Request 18), gifts to minor females (Request 20), personal calendars and diaries (Requests 21-22), and, prescription medicines (Request 23).[2]

Defendant's Motion as it relates to Production Requests 1, 2, 3, 4, 6, 8, 14, 15, 16, 17 and 20 is denied. The very act of producing documents in response to these requests is testimonial in nature, in that by production, Epstein would be implicitly communicating "statements of fact," to which the Fifth Amendment privilege may be validly asserted. Hubbell, 530 U.S. at 35-36. Not only do the subject requests implicitly involve "statements of fact," given the nature of the allegations against Epstein, they could also serve as links in the chain of evidence needed for prosecution. As such, Epstein's Fifth Amendment privilege assertion as it relates to these requests is sustained.

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[2] On page 5, footnote 6 of Plaintiff's Reply Brief, Plaintiff concedes that the act of producing items in response to Request 9, concerning witness statements, and Requests 12-13, concerning photographs or images of females, may implicate the Fifth Amendment. As such, Epstein's assertion of his Fifth Amendment privilege as it relates to these requests stands and Epstein need not produce documents responsive to Requests 9, 12-13..

In sustaining Epstein's Fifth Amendment privilege, the Court has considered the particular requests at issue, the facts alleged in the Complaints, the elements needed to convict Epstein of a crime, and has drawn upon the Court's knowledge concerning the cases at issue. On this basis, the Court finds the privilege raised as to these requests valid, and asserted by Epstein only with reference to "genuinely threatening questions." Goodwin, 625 F.2d at 701. Accordingly, finding the above-mentioned requests involve compelled statements that could furnish a link in the chain of evidence needed to convict Epstein of a crime, the Court finds Epstein's Fifth Amendment privilege claim as applied to these requests validly asserted.

The Court notes that in making this determination it is cognizant that except in those instances where it is apparent from the face of the subject requests that the act of producing responsive items would be protected under the Fifth Amendment, it is the Defendant's burden to demonstrate that the act of producing any particular responsive documents would entail testimonial self-incrimination. U.S. v. Wujkowski, 929 F.2d 981, 984 (4th Cir. 1991). In the instant case, it is evident from the requests themselves, the allegations in the various Complaints, and the facts and circumstances surrounding these cases, that to demand from Epstein a more particularized showing of danger, would require Epstein "to surrender the very protection which the privilege is designed to guarantee." Hoffman, 341 U.S. at 479. As such, no more particularized showing than that offered by Epstein in his Response Brief is necessary.

Plaintiff's Motion as it relates to Request 7 and 23 is granted. Request 7 seeks all surveillance videos or photographs of the Palm Beach residence. Request 23 seeks all documents referring or relating to Epstein's purchase or consumption of prescription

medication. It is not evident from the face of these requests, even given the allegations contained in the Complaints and the undersigned's knowledge of the facts and circumstances surrounding the action, how production of these responsive documents can in any way be seen to implicitly communicate "statements of fact." Nor is it evident from the face of these requests how production of responsive documents may "implicitly authenticate" items that are not themselves incriminating. It is therefore incumbent on Epstein to make a particularized showing, demonstrating how the act of producing responses to these requests would entail testimonial incrimination. Wujkowski, 929 F.2d at 984 (4th Cir. 1991). Epstein has failed to sustain his burden in this regard. Accordingly, Epstein's assertion of his Fifth Amendment privilege against self-incrimination in response to Requests 7 and 23 is denied, and Plaintiff's Motion as it relates to these requests is granted. Defendant has ten (10) days from the date hereof in which to produce documents responsive to these requests.

Plaintiff's Motion as it relates to requests for air travel documents (Request 10), model agency documents (Request 11), social networking site documents and photos (Request 18), witness statements (Request 19), and personal calendars or schedules (Request 21), is granted in part and denied in part. It is not evident from the face of these requests, even given the allegations contained in the Complaints and the undersigned's knowledge of the facts and circumstances surrounding the action, how production of responsive documents can in any way be seen to implicitly communicate "statements of fact." Nor is it evident from the face of the requests how production of responsive documents may "implicitly authenticate" items that are not themselves incriminating. It is therefore incumbent on Epstein to make a particularized showing, demonstrating how the

act of producing responses to these requests would entail testimonial incrimination. Wujkowski, 929 F.2d at 984 (4th Cir. 1991). Epstein has failed to sustain his burden in this regard.

Nonetheless, because the undersigned can imagine a scenario where production of documents responsive to these requests might constitute testimonial self incrimination, the Court defers ruling on the issue until such time as Epstein supplements his Response Brief by making a particularized showing, by *in camera* submission or otherwise, demonstrating how the Fifth Amendment may validly be asserted in response to these requests. Epstein shall have fifteen (days) from the date hereof in which to accomplish this task. Epstein has fifteen (15) days from the date hereof in which to produce documents responsive to any requests he elects not to address in the forthcoming supplementation.

Plaintiff's Motion as it relates to Request 5, seeking "all telephone records and other documents reflecting telephone calls made by or to Defendant", is denied as overly-broad and unduly burdensome. Plaintiff has failed to satisfactorily explain the relevance of this information to this litigation. Given the tremendous burden of producing the requested information, coupled with its tenuous connection to the issues in this case, the Court declines to compel a response to this request. See, e.g., World Triathlon Corp. v. SRS Sports Centre SDN, BHD, Case No. 8:04-cv-1594-T-24TBM, 2005 U.S. Dist. LEXIS 15412, at *2 (M.D. Fla. July 29, 2005)("the court may limit discovery upon the determination that the discovery sought is unreasonably burdensome or expensive or the expense of the proposed discovery outweighs its likely benefit, taking into account the needs of the case, the amount in controversy, the parties' resources, and the importance of the proposed discovery in resolving issues."); Priest v. Rotary, 98 F.R.D. 755, 761 (N.D. Cal.

1983)("When a discovery request '[a]pproaches the outer bounds of relevance and the information requested may only marginally enhance the objectives of providing information to the parties or narrowing the issues, the Court must then weigh that request with the hardship to the party from whom the discovery is sought.'")(quoting Carlson Cos., Inc. v. Sperry & Hutchinson Co., 374 F.Supp. 1080, 1088 (D.Minn. 1974)); 10 Federal Procedure, Lawyer's Edition § 26:70 (1994 & Supp. 2005)("the district courts should not neglect their power to restrict discovery where justice requires protection for a party ... from undue burden or expense.").

Finally, to the extent Epstein asks the Court to forbid the drawing of an adverse inference against Epstein for his failure to respond to discovery, said request is denied at this time, without prejudice and with leave to renew at a later date, as the request at this early juncture of the proceedings is premature.

In accordance with the above and foregoing, it is hereby

ORDERED AND ADJUDGED that Plaintiff's Motion to Compel Answers to Interrogatories and Production of Documents (D.E. #57) is **GRANTED IN PART AND DENIED IN PART** in accordance with the terms of the within Order. In accordance herewith, Plaintiff's Motion as it relates to Interrogatories 1, 2, 3, 4, 5, 6, 9, 12, 13, 14, 15, 16 and 17 and Production Requests 1, 2, 3, 4, 5, 6, 8, 14, 15, 16, 17, and 20 is denied, and Plaintiff's Motion as it relates to Interrogatories 7, 8 and 11, and Production Requests 17 and 23 is granted. A ruling on Plaintiff's Motion as it relates to Production Requests 10, 11, 18, 19, and 21 is deferred until Epstein files his Supplementary Response Brief, due fifteen (15) days from the date hereof, in which Epstein is required to make a particularized

showing, by *in camera* submission or otherwise, demonstrating how the Fifth Amendment may validly be asserted in response to these requests. Any of the above-mentioned requests (Requests 10, 11, 18, 19 and 21) not addressed in the forthcoming supplement are deemed by the Court to be outside a valid claim of Fifth Amendment privilege and must be responded to within fifteen (15) days from the date hereof.

DONE AND ORDERED this August 4, 2009, in Chambers, at West Palm Beach, Florida.

Linnea R. Johnson

LINNEA R. JOHNSON
UNITED STATES MAGISTRATE JUDGE

CC: The Honorable Kenneth A. Marra
All Counsel of Record