

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

JANE DOE NO. 2,

Plaintiff,

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

vs.

JEFFREY EPSTEIN,

Defendant.

\_\_\_\_\_  
Related cases:

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

**Defendant's Response In Opposition to Jane Doe 2-8s Motion to Compel Net Worth  
Discovery, With Incorporated Memorandum Of Law**

Defendant, Jeffrey Epstein (hereinafter "Epstein"), by and through his undersigned attorneys, hereby files his Response In Opposition to Jane Doe 2-8s Motion to Compel Net Worth Discovery (DE 333 and 333-1), With Memorandum Of Law. In support, Epstein states:

**I. Procedural Background**

Plaintiffs served their First Request for Production of Net Worth documents and Interrogatories, and Epstein served his responses and objections thereto. **See Composite Exhibit "A" and "B"**, respectively the Interrogatory Responses/Objections and the Responses/Objections to the Requests for Production, all of which are incorporated herein by reference. Plaintiff filed her Motion to Compel (DE 333).

Previously, this Court entered orders (DE 242 and 293) sustaining several of Epstein's objections under the Fifth Amendment. Many of the instant requests are covered by the Court's orders DE 242 and 293. These cases have been consolidated for

discovery. Therefore, pursuant to this Court's previous orders regarding discovery and issues concerning the 5<sup>th</sup> Amendment (DE 242), Epstein is providing certain information in camera because same relates to the 5<sup>th</sup> Amendment issues previously challenged by Plaintiffs.

**II. Epstein's Objections Should Be Sustained Under The 5<sup>th</sup> Amendment Because The Discovery Requests Seek Testimonial And Incriminating Information**

**a. Introduction and Discovery Requests**

The Magistrate Judge found that several of the requests were “. . . 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.” (DE 242, p. 10). On that basis, and as a limited example, this Court denied Plaintiff's motion relative to requests seeking telephone records of calls made by Epstein to his employees. Likewise, this Court denied Plaintiff's motion relative to interrogatories seeking the names of Epstein's employees or their telephone numbers finding that same “would furnish a link in the chain of evidence needed to prosecute Epstein of a crime.” (DE 242, p.8-9). Additionally, this Court denied Plaintiff's motion relative to interrogatories that required Epstein to identify persons or witnesses that have knowledge of the events in question. *Id.* at p. 8. In ruling, the court recognized that “. . . the facts alleged in the Amended Complaints, the elements needed to convict Epstein of a crime, and . . . the Court's knowledge concerning the cases at issue” provide a basis for Epstein to raise the privilege based upon “genuinely threatening questions” which could furnish a link in the chain of evidence needed to convict Epstein of a crime. (DE 242, p.18) United States v. Goodwin, 625 F.2d 693, 701 (5<sup>th</sup> Cir. 1980).

[REDACTED]

**The Interrogatories**

**Interrogatory No. 1:** State the fair market value of all assets in which Defendant has an ownership interest.

**Interrogatory No. 2:** Identify all financial statements or other documents from which net worth Interrogatory No. 1 was calculated.

**Interrogatory No. 3:** State gross liabilities, expenses, and other offsets to net worth, and identify all documents from which such items were calculated or determined.

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1 [REDACTED]

**Interrogatory No. 4:** List all real property, by legal description and/or street address, in which Defendant holds an ownership interest, and state for each the title holder of the property shown in the public records, and identify the nature and extent of Defendant's ownership.

**Interrogatory No. 5.** List all corporations, partnerships and other business entities in which Defendant has an ownership interest or had no ownership in the past five (5) years. As to each entity, list the address and nature of the business, and the Defendant's ownership interest.

**Interrogatory No. 6:** Identify all firms or companies which have performed property appraisals of Defendant's assets in the past five (5) years.

**Interrogatory No. 7:** List all cars, boats, airplanes and other modes of transportation in which Defendant has an ownership interest. As to each, list the year, make and model, the appraised value, and the percent of Defendant's ownership interest.

**Interrogatory No. 8:** Identify all persons, firms and companies which have performed tax or accounting related functions for Defendant in the past ten (10) years.

**Interrogatory No. 9:** Identify all employees of Defendant whose duties or functions include accounting, bookkeeping or financial planning.

**Interrogatory No. 10:** Identify any and all transfers of assets or property made by you or for which you signed any document or otherwise authorized, from January 1, 2006 to present.

**Interrogatory No. 11:** Identify all foreign firms, companies and trusts in which you have an ownership interest.

**Interrogatory No. 12:** Identify all firms or institutions in which Defendant has maintained an investment, brokerage, savings and/or trust account in the past five (5) years.

**Interrogatory No. 13:** Identify all current employment and other sources of income from 2008 to present.

**The Requests For Production**

**Request No. 1:** All Federal and State income tax returns, including all W-2 forms, 1099 forms and schedules, for tax years 2003-2008.

**Request No. 2:** All documents relating to the assets, liabilities, income, expenses and net worth of Defendant, including without limitation, the following for each of the past five (5) years.

**Request No. 3:** All documentation which refer or relate to financing or loans requested or applied for by the Defendant, including loan applications, appraisals, financial spreadsheets, etc.

**Request No. 4:** Any and all appraisals indicating fair market value of real estate or other property of Defendant.

**Request No. 5:** Any and all documents referring or relating to investment or savings accounts, including without limitation, account statements and summaries.

In Jane Doe No. 2 v. Epstein, Case No. 80119, the Magistrate Judge found, “[i]n 2008, Epstein entered into a Non-Prosecution Agreement (“NPA”) 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 NPA, 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 USAO’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 ... that the fact there exists a NPA does not mean that Epstein is free from future criminal prosecution, and that in fact, ‘the threat of prosecution is real, substantial and present.’” See August 4, 2009 Order (DE 242) and September 9, 2009 Omnibus Order (DE 293); and Manson v. United States, 244 U.S. 362, 365 (1917). Moreover, as this court knows, the NPA only defers prosecution in the Southern District of Florida, not other districts. Therefore, Epstein is “confronted by a substantial and ‘real,’ and not merely trifling or imaginary, hazard[] of incrimination”

when it comes to Plaintiff's discovery requests. United States v. Apfelbaum, 445 U.S. 115, 128 (1980).

The Fifth Amendment serves as a guarantee against testimonial compulsion and provides, in relevant part, that "[n]o person...shall be compelled in any Criminal Case to be a witness against himself." (DE 242, p.5); see also 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 and extends not only to answers that would 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. See Hoffman v. United States, 341 U.S. 479, 486 (1951). 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." See United States v. Neff, 315 F.2d 1235, 1239 (9th Cir.), cert denied, 447 U.S. 925 (1980); Blau v. United States, 340 U.S. 159 (1950); SEC v Leach, 156 F.Supp.2d 491, 494 (E.D. PA. 2001).

The Court has already ruled on questions similar to the ones posed by Plaintiffs and which seek similar identifying (or production of) information that could be used to incriminate Epstein, would furnish a link in the chain of evidence used to prosecute him and would require Epstein to be a witness against himself.

**b. *Epstein's Fifth Amendment Privilege Should Be Sustained As To Interrogatory No.s 5, 6, 8, 9, 11, 12 And 13 Because Each Seek To Have Epstein Identify Witnesses That Could Testify Against Him***

The court sustained Epstein's Fifth Amendment Privilege as it related to interrogatories that would require Epstein to identify employees and/or witnesses that

could testify against Epstein. (DE 242, p.7-11 & DE 293). Here, Plaintiff's Interrogatory No.s 5, 6, 8, 9, 11, 12 and 13 ask Epstein to, among other things, list corporations, partnerships and other entitled that Epstein has/had an ownership interest, identify all firms employed by Epstein that have performed services for Epstein, identify all persons, firms and companies employed by Epstein that have performed tax or accounting work for Epstein, identify all employees of [Epstein] whose duties or functions include accounting, bookkeeping or financial planning, identify all foreign firms, companies and trust in which [Epstein has] an ownership interest, identify all institutions in which Epstein has maintained accounts with and identify all current employment and other sources of income for Epstein.<sup>2</sup>

These interrogatories seek 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." See *infra* regarding [REDACTED]. In sum, the above interrogatories ask Epstein to identify corporations, firms, institutions and trusts he has/had an interest in, employees, accountants, tax advisors, bookkeepers and Epstein's

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<sup>2</sup> If Epstein cannot be forced to identify witnesses against him 242 and 293, then it goes without saying that he cannot be forced to identify persons, employees, accountants, tax advisors, bookkeepers, witnesses, entities/institutions, corporations and/or trusts that could result in Epstein providing a link to witnesses that could testify against him. In particular, identifying all corporations, partnerships, and other business entities in which he had/has an interest (Interrogatory No. 5), all firms or companies employed by Epstein to conduct appraisals (Interrogatory No. 6), all firms or companies employed by Epstein to perform tax or accounting functions (Interrogatory No. 8), all of Epstein's employees that performed accounting, bookkeeping or financial planning (Interrogatory No. 9), all foreign firms, companies or trusts in which he has an ownership interest (Interrogatory No. 11), all firms or institutions in which he had an investment, brokerage, savings or trust account (Interrogatory No. 12) and his current employment (Interrogatory No. 13), would violate his Fifth Amendment rights and should also be sustained because requiring him to respond could "... reveal the availability to him and/or use by him of "interstate facilities" and thus would constitute a link in the chain of evidence that could potentially expose him to the dangers of self-incrimination." See DE 282 and 293. This same argument applies to Interrogatory Numbers 4 and 7 which request that Epstein identify all real property in his name and his cars, boats and airplanes, all of which could reveal the availability to him and/or use of interstate facilities. DE 293. See *infra* with regard to argument as to how the requested information could also lead to Epstein's whereabouts — a fact this court ruled as being crucial to this case and the other related cases. (DE 293, p.5).

current employment, all of which could result in Epstein providing information that could implicate him and could result in Epstein providing a hint or a clue as to who may have knowledge of the events in question. (DE 242 & 293) Asking Epstein to identify such information will implicate the Fifth Amendment, force him to incriminate himself in the commission of crimes and force Epstein to provide compelled information. See e.g., DE 242. This is the same thing as asking Epstein to identify and provide a list of his employees, which the court has already ruled would be tantamount to asking Epstein to “. . . identify potential witnesses against him. . .” (DE 242, p. 9-11) See also, infra.

Requiring Epstein to list and delineate the requested information constitutes compelled testimonial admissions that could potentially provide a ‘lead or clue’ or a link in the chain of evidence having a tendency to incriminate Epstein and would threaten to invade his privilege against being required to produce and/or testify. Rudy-Glanzer v. Glanzer, 232 F.3d 1258, 1263 (9<sup>th</sup> Cir. 2000)(the “privilege” against self-incrimination does not depend upon the likelihood, but upon the possibility of prosecution and also covers those circumstances where the disclosures would not be directly incriminating, but could provide an indirect link to incriminating evidence).

As this court recognized, Epstein can properly invoke his Fifth Amendment right to not identify any person who may have information pertaining to the alleged events. For these reasons, Epstein’s justified concern with regard to answering the above interrogatories and the resulting waiver of his Fifth Amendment Privilege in this regard is substantial, real and not merely imaginative. Accordingly, Defendant’s assertion of the protections afforded under the 5<sup>th</sup>, 6<sup>th</sup>, and 14<sup>th</sup> Amendments of the United States Constitution are required to be upheld.

In addition, Interrogatory No.s 5, 6, 8, 9, 11, 12 and 13 and the information sought relate to potential federal claims of violations. See infra for more detailed and incorporated argument and DE 282 and 283, in camera.

**c. Epstein's Fifth Amendment Privilege And  
Other Objections Should Further Be Sustained As To  
Interrogatory Numbers 1-13 and Request to Produce Numbers 1-5**

Interrogatory Numbers 1, 2, 3, 4 and 7 will be addressed in this section; however, the same argument applies to Interrogatory Numbers 5, 6, 8, 9, 11, 12 and 13 (addressed above on different grounds) and Request for Production Numbers 1-5.

Epstein cannot provide answers/responses to questions relating to his financial history and condition without waiving his Fifth, Sixth, and Fourteenth Amendments as guaranteed by the United States Constitution. The requests are unreasonable, overbroad, confidential, proprietary in nature, the subject of potential federal claims violations and thus seek information that is neither relevant to the subject matter of the pending action. The information sought is privileged and confidential, and inadmissible pursuant to the terms of the NPA and Fed. Rule of Evidence 410 and 408, and Fla. Stat. 90.410.

(i) [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

10

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Answers to the specified Interrogatories and Requests for Production could therefore provide self-incriminating information and the possibility of future criminal prosecution for an alleged violation of the above target offenses. Production would constitute a testimonial admission of the genuineness, the existence, and Epstein's control of such records, and thus presents a real and substantial danger of self-incrimination in this case, in other related cases and as well in areas that could result in criminal prosecution. Hubbell, 530 U.S. at 35-36. Accordingly, any compelled testimony that provides a "lead or clue to a source of evidence of such [a] crime" is protected by Fifth Amendment. SEC v Leach, 156 F.Supp.2d 491, 494 (E.D. PA. 2001). See supra. Questions seeking "testimony" regarding names of witnesses, leads to phone or travel records, or financial records that would provide leads to tax or money laundering or unlicensed money transmittal investigations are protected. See also Hoffman v United States, 341 U.S. 479, 486 (1951)("the right against self-incrimination may be invoked if the answer would furnish a link in the chain of evidence needed to prosecute for a crime") and United States v. Hubbell, 530 U.S. 27, 36, 120 S.Ct. 2037, 2043 (2000). See

*infra* for detailed argument applying the Fifth Amendment to the target offenses. Here, the information sought is financial in nature and, therefore, directly relates to Epstein's business activities and thus [REDACTED] Answers to the specified discovery requests could provide a link in the chain of evidence used to prosecute Epstein for those crimes. Sheldon v. Sheldon, 193 B.R. 152, 162 (S.D.N.Y 1996).

To the extent the discovery requests seek financial information exchanged between Epstein and the federal authorities, this court already ruled on similar requests in 80119 whereby the Plaintiffs, Jane Doe 2-7, asked the following:

**Request No. 2.** All documents referring or relating to the United States' agreement with Defendant to defer federal prosecution subject to certain conditions, including without limitation, the operative agreement between Defendant and the United States and all amendments, revisions and supplements thereto.

**Request No. 3.** All documents referring or relating to Defendant's agreement with the State of Florida on his plea of guilty to violations of Florida Criminal Statutes, including without limitation, the operative plea agreement and any amendments, revisions and supplements thereto.

**Request No.4.** All documents obtained in discovery or investigation relating to either the Florida Criminal Case or the Federal Criminal Case, including without limitation, documents obtained from any federal, state, or local law enforcement agency, the State Attorney's office and the United States Attorney's office.

The court specifically held at p.17 of its Order at DE 242 that "[d]efendant's Motion as it relates to Production request number(s) 2, 3, 4. . . is [granted]. 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. Here, not only do the subject requests involve 'statements of fact,' but the financial information sought, including tax returns, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] As such, Epstein's Fifth Amendment Privilege assertion as it relates to these requests should be sustained. See infra.

In addition to the above argument, the specific information requested in request number 1 as to personal tax returns also seeks information that is confidential and protected by federal law, 26 U.S.C. §6103.

(ii) The Fifth Amendment

The Fifth Amendment is a safe harbor for all citizens, including those who are innocent of any underlying offense. The specified Interrogatories and Requests, if answered, may result in compelled testimonial communications from Epstein regarding his financial status and history and would require him to waive his right to decline to respond to other inquiries related to the same subject matter in this case [REDACTED]

[REDACTED] Responding to this and other related inquiries would have the potential to provide a link in a chain of information and/or leads to other evidence or witnesses that would have the specific risk of furthering an investigation against him and, therefore, are protected from compulsion by Epstein's constitutional privilege. If required to respond to the requests for Production, Epstein will be implicitly communicating statements of fact, authenticating documents and testifying to their location and existence. DE 242 and 293.

Under Hubbell, the Fifth Amendment encompasses compelled statements that lead to the discovery of incriminating evidence even though the statements themselves are not incriminating, and it further protects the target of a grand jury investigation from

being compelled to answer questions designed to elicit information about the existence of potentially incriminating evidence including, but not limited to, financial information. (emphasis added) Hubbell, 530 U.S. at 37-38 and 43-44. Hubbell applies broadly to the specified discovery requests in the instant matter.

The court will note that, as worded, the interrogatories and the requests seek information regarding Epstein's assets, ownership of assets and transfer of assets, and the requests broadly seek information relating to assets, ownership of assets, corporations and trusts and transfer of assets in locations inside and outside the United States. Defendant has already provided this court with sufficient argument at DE 282 and DE 283 detailing why the production or identification of information showing or providing a clue as to Epstein's whereabouts could provide a link in the chain of evidence regarding: (a) Epstein's air travel within the United States and Foreign Territories; (b) Epstein's communications with others relating to or referring to females coming into the United States from other countries; and (c) Epstein's personal calendars and schedules. Given that the essential proof of an allegation of 18 U.S.C. 2423(b) would include travel records, schedules regarding trips and locations, flight records, calendars, and transportation arrangements, the court found that Epstein had made a more particularized showing because producing such information "could reveal the availability to him and/or use by him of interstate facilities and thus would constitute a link in the chain of evidence that could potentially expose [Epstein] to the dangers of self incrimination." (DE 293, p.6)

Here, Plaintiffs request that Epstein identify his financial information, ownership of assets and transfers of assets inside and outside the United States, which "could reveal

the availability to him and/or use by him of interstate facilities and thus would constitute a link in the chain of evidence that could potentially expose [Epstein] to the dangers of self incrimination.” (DE 293, p.6). Plaintiffs wish to obtain this information to corroborate their position that Epstein has traveled, had the means to travel, and had business or residences inside and outside of the United States to allegedly transport females for purposes of sex, which is no different from the requests this Court has already ruled upon and sustained Epstein’s Fifth Amendment privilege in response thereto. (DE 242 & 293). In analyzing Epstein’s Fifth Amendment Privilege, this court cannot dismiss the allegations made by other Jane Doe’s in the related cases. In summary, this court reasoned that:

“[i]n this and the other civil actions, Plaintiff’s allege that Epstein violated certain federal and state criminal statutes in an attempt to make claims against Epstein ranging from sexual battery to intentional infliction of emotional distress. The lynchpin for the exercise of federal criminal jurisdiction under 18 U.S.C. §2422(b), which figures in some of the complaints filed, is ‘the use of any facility or means of interstate or foreign commerce’ and the analogous essential element of 18 U.S.C. §2423(b), which also figures in some of the Complaints, is ‘travel[s] in interstate commerce or travels into the United States or . . . travels in foreign commerce.’ Accordingly, requiring Epstein to provide responses. . . would in essence be compelling him to provide assertions of fact. . . .

While these Interrogatories and Requests appear to be general-identification type information, which on their face may not appear to infringe upon Epstein’s rights under the 5<sup>th</sup> Amendment, responding to same would furnish Plaintiff with the ability to serve subpoenas on certain institutions, entities, employees, accountants, tax advisors, housekeepers and others in charge of the homes Epstein owns and others that are affiliated with the corporations, partnerships and other business entities Epstein has an interest in including, but not limited to, the request that Epstein list all foreign firms,

companies and trusts in which Epstein has an ownership interest, which may furnish a link in the chain of evidence needed to convict Epstein of a crime. See (DE 282 and 293, in camera). Epstein cannot be required to waive his privileges under the Fifth, Sixth and Fourteenth Amendments to the United States Constitution and provide compelled testimony and information that may, directly or indirectly, furnish Plaintiff a clue or link in the chain of evidence used to prosecute him. Rudy-Glanzer v. Glanzer, 232 F.3d at 1263(the “privilege” against self-incrimination does not depend upon the likelihood, but upon the possibility of prosecution and also covers those circumstances where the disclosures would not be directly incriminating, but could provide an indirect link to incriminating evidence). Essentially, Plaintiff’s Interrogatories and Requests seek to have Epstein be a witness against himself, assist with Plaintiffs’ investigation and identify areas that could result in future prosecution of Epstein, including the [REDACTED]

Next, “. . . Epstein’s whereabouts. . .[is] crucial [to the] issues in this case and other related cases and . . . if he is forced to reveal [certain] information, these testimonial disclosures could subsequently be used to incriminate him and/or prosecute him for a criminal offense.” (DE 293, p.4-5) The court correctly recognized that “the lynchpin for the exercise of federal criminal jurisdiction under 18 U.S.C. §2422(b), which figures in some of the complaints filed, is ‘the use of any facility or means of interstate or foreign commerce’ and the analogous essential element of 18 U.S.C. §2423(b), which also figures in some of the Complaints, is ‘travel[s] in interstate commerce or travels into the United States or . . . travels in foreign commerce.’” Accordingly, if Epstein’s telephone records are protected from disclosure under the Fifth Amendment it goes without saying

that his financial information is also protected from disclosure as revealing same could result in subsequent subpoenas for information that may identify his whereabouts on a particular day and time and may also lead to the identity of witnesses that may have knowledge of the alleged events. In particular, Interrogatory Numbers 1-13 and Request Numbers 1-2, 4 and 5 all seek information that could provide a link in the chain as to Epstein's whereabouts, which could result in self-incrimination and future criminal prosecution.

Even so, Epstein cannot be compelled to provide information that would lead to the identity of witnesses that may have knowledge of the alleged events. In sum, Epstein cannot be required to be a witness against himself or provide information that may incriminate him and lead to future prosecution. Each of the Plaintiffs' Second Amended Complaints includes allegations that Epstein is of "tremendous wealth, power and influence." See e.g., DE 62, ¶8. Each Plaintiff seeks in excess of 50 million dollars. The Second Amended Complaint states that "Sarah Kellen, Epstein's assistant" was a part of "Epstein's plan and scheme (which) reflected a particular pattern and method" in the alleged recruiting of girl's to come to Epstein's Palm Beach mansion and give him "massages" in exchange for money. See 2<sup>nd</sup> Am. Complaint, ¶11-13 (emphasis added) Plaintiff also alleges that Epstein "maintains his principal home in New York and also owns residences in New Mexico, St. Thomas and Palm Beach, FL." Id. ¶8. "Upon information and belief, Jeffrey Epstein carried out his scheme and assaulted girls in Florida, New York and on his private island, known as Little St. James, in St. Thomas." Id. ¶10. The nature of the allegations are serious, and state clearly that the alleged assaults occurred in Florida, New York and in St. Thomas.

The foregoing allegations demonstrate clearly how information concerning Epstein's whereabouts and his financial condition are sustainable under the Fifth Amendment. Given the importance of interstate and foreign travel, Epstein's whereabouts, the assets or businesses he owns and any other identifying financial information relating to his whereabouts is protected under the Fifth Amendment because being compelled to provide same could potentially identify witnesses to testify against Epstein, thereby resulting in testimonial authentication, location, possession and the existence of certain information and self-incrimination. Here, there is too close a nexus between the information sought and the pivotal jurisdictional requisites of 18 U.S.C. 2422(b)(the use of "interstate facilities") and 18 U.S.C. 2423(b)(the requirement of interstate travel i.e., Epstein's places of employment, locations of homes and businesses in and out of the United States and his assets). As such, answers to the specified discovery requests will obviously reveal Epstein's whereabouts (or possible whereabouts), which could provide leads to other evidence that could inculcate Epstein. If Epstein is compelled to provide any information relative to the Specified Requests that information could subsequently be used to incriminate him and it might be used to establish the elements of the target offenses identified above.

Moreover, the allegations clearly provide that Epstein is rich and spent substantial sums on the matters that are the subject of the civil complaints. Therefore, in connection with the target offenses setout above and the NPA, Epstein has a Fifth Amendment privilege not to admit he has any money, wealth, interests in any businesses, partnerships and/or corporations since doing so would constitute links in the chain of evidence that would pose a specific hazard of self-incrimination and prosecution.

Next, requiring Epstein to provide responses to the contested production requests would in essence constitute a testimonial admission of the genuineness, the existence, and Epstein's control of such records, and thus presents a real and substantial danger of self-incrimination in this case, in other related cases and as well in areas that could result in criminal prosecution. See generally Hoffman, 341 U.S. at 486 and Hubbell, 530 U.S. at 36; In re Grand Jury Subpoena, 1 F.3d 87, 93 (2d Cir. 1993)(noting that in those instances where the existence and/or location of the requested documents are unknown, or where production implicitly authenticates the requested documents, the act of producing responsive documents is considered testimonial and is protected by the Fifth Amendment). 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, requires Epstein to walk a thin line with regard to "surrender[ing] the very protection which the privilege is designed to guarantee." Hoffman, 341 U.S. at 479. The United States Supreme Court has made clear that the scope of 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."<sup>4</sup> Hubbell, 530 U.S. at 36; see also Fisher v. United States, 425 U.S. 391 (1976); McCormick on Evidence, Title 6, Chap. 13. *The Privilege Against Self-Incrimination*, §138 (6<sup>th</sup> Ed.). The "implicit authentication" rationale appears to be the prevailing justification for the Fifth Amendment's application to documentary subpoenas, which is no different from producing documents responsive to a request for production. Hubbell, 530 U.S. 27, 36 (2000); Schmerber v. California, 384 U.S., 757, 763-764, (1966) ("the privilege reaches . . . the compulsion of responses which

are also communications, for example, compliance with a subpoena to produce one's papers); Couch v. United States, 409 U.S. 322, 344-46 (1973) (the person complying with the subpoena "implicitly testifies that the evidence he brings forth is in fact the evidence demanded"); People v. Defore, 242 N.Y. 13, 27 (1926) ("A defendant is 'protected from producing his documents in response to a Subpoena duces tecum, for his production of them in court would be his voucher of their genuineness.' There would then be 'testimonial compulsion' ").

For these reasons, Epstein's justified concern with regard to answering the above Interrogatories and Requests for Production, and the resulting waiver of his Fifth Amendment Privilege in this regard and/or providing self-incriminating information is substantial, real and not merely imaginative. Accordingly, based on the facts and circumstances of this case, and under applicable law, Defendant's assertion of the protections afforded under the 5<sup>th</sup>, 6<sup>th</sup>, and 14<sup>th</sup> Amendments of the United States Constitution are required to be upheld.

### (iii) **Third Party Privacy Rights**

Here, Interrogatory Numbers 5, 6, 8, 9 and 11-13 also seek information that may violate others' third-party privacy rights. As noted by the United States Supreme Court in Eisenstadt v. Baird, 405 U.S. 438, 454, 92 S.Ct. 1029, 1038, at fn. 10 (1972):

In Stanley, 394 U.S., at 564, 89 S.Ct., at 1247, the Court stated: "(A)lso fundamental is the right to be free, except in very limited circumstances, from unwanted governmental intrusions into one's privacy." The makers of our Constitution undertook to secure conditions favorable to the pursuit of happiness. They recognized the significance of man's spiritual nature, of his feelings and of his intellect. They knew that only a part of the pain, pleasure and satisfactions of life are to be found in material things. They sought to protect Americans in their beliefs, their thoughts, their emotions, and their sensations. They conferred, as against the Government, the right

to be let alone-the most comprehensive of rights and the right most valued by civilized man.' [Citations omitted].

The fundamental right of privacy is not only guaranteed under by the Fourteenth Amendment of the United States Constitution, but also under the Constitution of the State of Florida, Art. I, Sect. 23. As summarized by the Florida Supreme Court in Shaktman v. State, 553 So.2d 148, 150-51 (Fla. 1989):

The right of privacy, assured to Florida's citizens, demands that individuals be free from uninvited observation of or interference in those aspects of their lives which fall within the ambit of this zone of privacy unless the intrusion is warranted by the necessity of a compelling state interest. In an opinion which predated the adoption of section 23, the First District aptly characterized the nature of this right.

A fundamental aspect of personhood's integrity is the power to control what we shall reveal about our intimate selves, to whom, and for what purpose.

Bryon, Harless, Schaffer, Reid & Assocs., Inc. v. State ex rel. Schellenberg, 360 So.2d 83, 92 (Fla. 1st DCA 1978), *quashed and remanded on other grounds*, 379 So.2d 633 (Fla.1980). Because this power is exercised in varying degrees by differing individuals, the parameters of an individual's privacy can be dictated only by that individual. The central concern is the inviolability of one's own thought, person, and personal action. The inviolability of that right assures its preeminence over "majoritarian sentiment" and thus cannot be universally defined by consensus.

(Emphasis added).

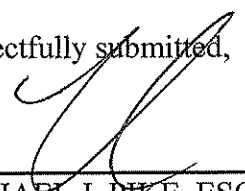
Clearly, the nature of the questions identified would require Epstein to list information that may identify third parties (that could also testify against him) and necessarily thwart such individuals' rights to assert their constitutional right of privacy as guaranteed under the United States and Florida Constitutions as well as their rights under the Fifth Amendment to the United States Constitution.

Accordingly, Defendant's assertion of the protections afforded under the 5<sup>th</sup>, 6<sup>th</sup>, and 14<sup>th</sup> Amendments of the United States Constitution are required to be upheld.

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

- a. finding that the danger Epstein faces by being forced to testify in this case relative to the above interrogatories and produce or identify the specified documents is substantial and real, and not merely trifling or imaginary;
- b. sustaining Epstein's Fifth Amendment Privilege and other delineated constitutional privileges as it relates to the above interrogatories and requests and denying Plaintiff's Motion in that regard; and
- c. for such other and further relief as this Court deems just and proper.

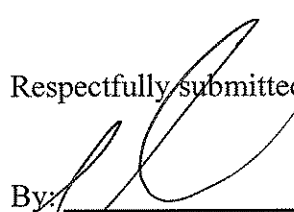
Respectfully submitted,

By:   
MICHAEL J. PIKE, ESQ.  
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**Certificate of Service**

I HEREBY CERTIFY that a true copy of the foregoing was electronically filed with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record identified on the following Service List in the manner specified by CM/ECF on this 2 day of November, 2009

Respectfully submitted,

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