

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

JANE DOE NO. 2,

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

Plaintiff,

vs.

JEFFREY EPSTEIN,

Defendant.

CASE NO.: 08-CV-80232-MARRA/JOHNSON

Plaintiff,

vs.

JEFFREY EPSTEIN,

Defendant.

CASE NO.: 08-CV-80380-MARRA/JOHNSON

Plaintiff,

vs.

JEFFREY EPSTEIN,

Defendant.

CASE NO.: 08-CV-80381-MARRA/JOHNSON

Plaintiff,

vs.

JEFFREY EPSTEIN,

Defendant.

CASE NO.: 08-CV-80994-MARRA/JOHNSON

Plaintiff,
vs.

JEFFREY EPSTEIN,

Defendant.

JANE DOE NO. 7,

CASE NO.: 08-CV-80993-MARRA/JOHNSON

Plaintiff,
vs.

JEFFREY EPSTEIN,

Defendant.

C.M.A.,

CASE NO.: 08-CV-80811-MARRA/JOHNSON

Plaintiff,
vs.

JEFFREY EPSTEIN,

Defendant.

JANE DOE,

CASE NO.: 08-CV-80893-MARRA/JOHNSON

Plaintiff,
vs.

JEFFREY EPSTEIN,

Defendant.

JANE DOE NO. II,

CASE NO.: 08-CV-80469-MARRA/JOHNSON

Plaintiff,

vs.

JEFFREY EPSTEIN,

Defendant.

/

JANE DOE NO. 101,

CASE NO.: 09-CV-80591-MARRA/JOHNSON

Plaintiff,

vs.

JEFFREY EPSTEIN,

Defendant.

/

JANE DOE NO. 102,

CASE NO.: 09-CV-80656-MARRA/JOHNSON

Plaintiff,

vs.

JEFFREY EPSTEIN,

Defendant.

/

**PLAINTIFFS JANE DOE NO. 101 AND JANE DOE NO. 102'S REPLY
IN SUPPORT OF PLAINTIFFS' MOTION FOR AN ORDER FOR THE
PRESERVATION OF EVIDENCE**

Plaintiffs Jane Doe No. 101 and Jane Doe No. 102 (collectively, "Plaintiffs") reply to Defendant Jeffrey Epstein's Response to Plaintiffs' Motion for an Order for the Preservation of Evidence ("Response") and state as follows:

1. Defendant complains that Plaintiffs "once again mislead and mischaracterize the criminal counts to which Epstein pled guilty" (Resp. ¶ 1) and that Plaintiffs' allegations in paragraphs 2 and 3 of Plaintiffs' Motion for an Order for the Preservation of Evidence ("Motion")

are without factual basis (*id.* ¶ 2). While Plaintiffs strenuously disagree with Defendant's statements, these allegations and denials are irrelevant to this Motion for an Order for the Preservation of Evidence.

2. Defendant asserts that he previously agreed to preserve all necessary evidence by way of an Order, attached to his Response as Exhibit "A," which Order was entered in another counsel's earlier-filed case, *Jane Doe a/k/a Jane Doe No. 1 v. Epstein et al.*, Case No. 08-80804-CIV-MARRA/JOHNSON [D.E. 20]. Defendant's attorneys state that they have no objections to a similar order being issued in the present case (*see* Resp. ¶ 4); however, defense counsel fail to mention in their Response that the Order in *Jane Doe No. 1* does not provide for the preservation of evidence that Plaintiffs are requesting in the present case. The discovery request in *Jane Doe No. 1* pertains merely to items listed in a property receipt for evidence confiscated by the Palm Beach Police Department. Here, Plaintiffs, through their Motion, request the preservation of relevant and discoverable evidence beyond those confiscated items. Defendant asserts no specific objections to any of the items listed in paragraphs 8 through 10 of Plaintiffs' Motion, but, instead, asks the Court to enter an order similar to the Order in *Jane Doe No. 1*, which would be tantamount to denying most of Jane Doe No. 101 and Jane Doe No. 102's preservation request.

3. Defendant objects to Plaintiffs' request for preservation as being "grossly overly broad" (Resp. ¶ 7), but fails to demonstrate any basis for this objection. Furthermore, this contention is hypocritical, considering that Defendant issued an equally, if not more, expansive request in his May 12, 2009 letter to Plaintiffs' counsel. *See* Ex. "A," attached hereto. Plaintiffs specify in paragraphs 8 through 10 of their Motion that the list of items to be preserved consists of *relevant*

evidence.¹ In contrast, Defendant's letter requests the preservation of all computer files and electronic data, without any specification limiting his request to potentially relevant documents.

4. Defendant complains that Plaintiffs' request to preserve evidence includes information that is not calculated to lead to the discovery of admissible evidence. However, potential admissibility is not relevant to a preservation order, as the court recognized in *Capricorn Power Co. v. Siemens Westinghouse Power Corp.*, 220 F.R.D. 429, 434 (W.D. Pa. 2004): “[A] motion for a preservation order can be granted with regard to all items of evidence which are *discoverable* in accordance with Federal Rule of Civil Procedure 26(b)(1), without the necessity of establishing that the evidence will necessarily be relevant and admissible at trial.”

5. Defendant's Fifth Amendment concerns are premature, as Plaintiffs are not asking Defendant to produce evidence. Defendant admits in his Response that “[t]he Fifth Amendment Privilege extends to the act of production” (Resp. ¶ 7). Indeed, Defendant's entire Fifth Amendment privilege argument throughout his Response rests solely on case law dealing with the production of evidence. Defendant does not cite to any authority for his assertion that the privilege against self-incrimination applies to preserving, as opposed to producing, evidence. Unsurprisingly, Defendant merely posits, with no legal basis, that “Plaintiffs' motion to preserve evidence . . . is in reality no different than [sic] propounding a discovery request upon Defendant,” (*id.*) Such an assertion is senseless. If and when a notice to produce is served, the Court will determine the

¹ One example of a relevant request by Plaintiffs in their Motion is for “records of domestic and international travel, including travel in Defendant's private airplanes;” Motion ¶ 8. Considering Count Two of Jane Doe No. 101's Amended Complaint, which is entitled “Travel with Intent to Engage in Illicit Sexual Conduct pursuant to 18 U.S.C. § 2255 in Violation of 18 U.S.C. § 2423(b),” (Amended Complaint ¶¶ 29-32), records of Defendant's travel are relevant and important documents that must be preserved.

validity of any claims of Fifth Amendment privilege. Until then, briefing Fifth Amendment privilege issues is a waste of the Court's and counsel's time.

6. Finally, whether the Non-Prosecution Agreement is, as Defendant coins it, a "deferred prosecution agreement" (*see* Resp. ¶ 6), is irrelevant to Plaintiffs' Motion for an Order for the Preservation of Evidence.

WHEREFORE, Plaintiffs request that the Court enter the order that Plaintiffs submitted with their Motion for an Order for the Preservation of Evidence.

DATED this 22nd day of June, 2009.

Respectfully submitted,

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CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that on this 22nd day of June, 2009, we electronically filed the foregoing document with the Clerk of the Court using CM/ECF. We also certify that the foregoing document is being served this day on all counsel of record identified on the attached Service List either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

Respectfully submitted,

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Case No. 08-CV-80119-MARRA/JOHNSON
United States District Court, Southern District of Florida

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