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

Case No. 50-2009CA040800XXXXMBAG

JEFFREY EPSTEIN,

Plaintiff/Counter-Defendant,

v.

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

Defendants/Counter-Plaintiff.
_____/

PLAINTIFF/COUNTER-DEFENDANT JEFFREY EPSTEIN'S RESPONSE TO DEFENDANT/COUNTER-PLAINTIFF BRADLEY EDWARDS' MOTION TO COMPEL

Plaintiff/Counter-Defendant, Jeffrey Epstein ("Epstein"), responds in opposition to Defendant/Counter-Plaintiff, Bradley Edwards' ("Edwards") Motion to Compel Epstein to respond to Edwards' February 6, 2018 Request for Admissions, and states:

INTRODUCTION

Without argument or explanation, Edwards seeks an order compelling Epstein to respond to the Requests for Admissions ("RFAs") propounded on February 6, 2018, claiming Request #1 is "impermissibly evasive" and Request #2 objection based on privilege has been "waived." Edwards' Motion should be denied simply because it is devoid of any argument or authorities to support his position. In the alternative, Edwards should not be allowed to present any authorities or support for his Motion at the hearing of this matter without giving Epstein an appropriate amount of time to serve a written response.

Nevertheless, Epstein *did* respond as set forth below:

1. The printout of your New York State Sex Offender registration page attached [to the Request] as Exhibit 'A' is authentic.

RESPONSE

Epstein cannot admit or deny this request because he has no control over or personal knowledge about the authenticity of the registration attached as Exhibit 'A' to Edwards' Request.

2. The information contained in the printout of your New York State Sex Offender registration page attached [to the Request] as Exhibit 'A' is accurate.

RESPONSE

Epstein cannot admit or deny this request because any response would require the disclosure of information which could communicate a statement of fact that is testimonial in nature. *Fisher v. United States*, 425 U.S. 391, 410 (1976). There is a substantial and reasonable basis for concern that such testimonial statements of fact could reasonably furnish a "link in the chain of evidence" that could be used to prosecute him in future criminal proceedings. *See Hoffman v. United States*, 341 U.S. 479, 486 (1951). Additionally, Epstein cannot respond to this request without waiving his Fifth, Sixth and Fourteenth Amendment Rights as guaranteed by the United States Constitution and Article I, Sections 2, 9 and 16 of the Florida Constitution.

Edwards offers no record legal support for his blanket assertions of "waiver" and "vague." Rather, Edwards' latest Motion is meritless and an obvious attempt to circumvent the hearsay rule.

ARGUMENT

The Response to RFA #1 is not "Impermissibly Vague" Because Epstein Cannot Authenticate Printouts from a New York State Government Website.

Epstein's response to Request #1 is not "impermissibly vague," but is the only proper response under Florida law. Indeed, Florida law is clear that "[d]ocumentary and electronic evidence must be authenticated before it is admissible, and "**[t]he party offering electronic evidence must introduce evidence sufficient to support a finding** that the evidence is what its

proponent claims." § 901.1a *Electronic evidence*, 1 Fla. Prac., Evidence § 901.1a (2017 ed.) (emphasis added; citations omitted). Edwards, as the proponent of the evidence, bears this burden.

"Web-sites," however, "are not self-authenticating. **To authenticate printouts from a website, the party proffering the evidence must produce some statement or affidavit from someone with knowledge of the website** . . . for example a web master or someone else with personal knowledge would be sufficient." *Nationwide Mut. Fire Ins. Co. v. Darragh*, 95 So. 3d 897, 900 (Fla. 5th DCA 2012) (citing *St. Luke's Cataract & Laser Inst., P.A. v. Sanderson*, 2006 WL 1320242 (M.D. Fla. May 12, 2006) (emphasis added)). In *Darragh*, for example, the appellate court held that information and printouts from a government website concerning expected military retirement benefits were not admissible, because the website printouts were not authenticated. *Id*. at 899-900.

Other cases similarly hold that a website printout is not admissible in the absence of predicate testimony to establish the authenticity of the printout. *See*, *e.g.*, *Dolan v. State*, 187 So. 3d 262, 266 (Fla. 2d DCA 2016) (error to admit booking photograph printed from sheriff's website that had not been authenticated. "Any argument that a copy of an online document, **even a document from a government website**, can be admitted into evidence over objection to prove an essential element . . . without any predicate testimony to establish its authenticity or to prove the truth of its content, . . . borders on the frivolous.") (emphasis added); *Lodge v. Kondaur Capital Corp.*, 750 F.3d 1263, 1274 (11th Cir. 2014) (document purportedly from the "Georgia Press Association Public Notice Website" that listed foreclosure advertisements for properties was inadmissible because it was not authenticated); *Sun Protection Factory, Inc. v. Tender Corp.*, 2005 WL 2484710 (M.D. Fla. 2005) ("[W]ebsites are not self-authenticating.").

Epstein is not "someone with knowledge" of the New York State Sex Offender registration website. As such, he cannot admit—nor can he be compelled to admit—that the website printout is authentic.

Epstein Cannot Be Forced to Incriminate Himself, and His Privilege Objection to RFA #2 was not Waived.

Epstein appropriately asserted his constitutional privileges against self-incrimination when asked to admit to the *accuracy* of the information contained in the printout of the New York State Sex Offender registration page. Simply, he cannot be compelled to give a different response.

The United States Constitution guarantees that a person may not be compelled to testify or give evidence against himself. *See* U.S. CONST. amend. V; *Maness v. Meyers*, 419 U.S. 449, 461 (1975). The Fifth Amendment may be asserted in civil cases "wherever the answer might tend to subject to criminal responsibility him who gives it." *McCarthy v. Arndstein*, 266 U.S. 34, 40 (1924). Thus, the privilege may be asserted to avoid civil discovery if the person invoking it reasonably fears the answer would tend to incriminate him. *See id.*; *U.S. v. Certain Real Prop. & Premises Known as 4003-4005 5th Ave., Brooklyn, N.Y.*, 55 F.3d 78, 82 (2d Cir. 1995) (internal citations omitted) ("[A] civil litigant may legitimately use the Fifth Amendment to avoid having to answer inquiries during any phase of the discovery process. "[C]ourts have repeatedly held that **the privilege against self-incrimination justifie[s] a person in refusing** to answer questions at a deposition, or **to respond to** interrogatories, or **requests for admissions**, or to produce documents.") (emphasis added).

"The protection does not merely encompass evidence which may lead to criminal conviction, but includes information which would furnish a link in the chain of evidence that could lead to prosecution, as well as evidence which an individual reasonably believes could be

used against him in a criminal prosecution." *Maness*, 419 U.S. at 461 (citing *Hoffman v. United States*, 341 U.S. 479 (1951)).

Edwards fails to specify *how*, *when*, or *where* this purported waiver occurred. And this Court should be hesitant to find one. "Because the right to be free from self-incrimination is a fundamental principle secured by the Fifth Amendment, waiver of the privilege will not be lightly inferred, and courts will generally indulge every reasonable presumption against finding a waiver." *Jenkins v. Wessel*, 780 So. 2d 1006, 1008 (Fla. 4th DCA 2001) (citation omitted).

CONCLUSION

Plaintiff/Counter-Defendant, Jeffrey Epstein, respectfully requests that this Honorable Court enter an Order denying Defendant/Counter-Plaintiff, Bradley Edwards' Motion to Compel.

CERTIFICATE OF SERVICE

I certify that the foregoing document has been furnished to the attorneys listed on the Service List below on March 3, 2018, through the Court's e-filing portal pursuant to Florida Rule of Judicial Administration 2.516(b)(1).

LINK & ROCKENBACH, PA
1555 Palm Beach Lakes Boulevard, Suite 301
West Palm Beach, Florida 33401
(561) 727-3600; (561) 727-3601 [fax]

By: */s/ Scott J. Link*
Scott J. Link (FBN 602991)
Kara Berard Rockenbach (FBN 44903)
Angela M. Many (FBN 26680)
Primary: Scott@linkrocklaw.com
Primary: Kara@linkrocklaw.com
Primary: Angela@linkrocklaw.com
Secondary: Tina@linkrocklaw.com
Secondary: Troy@linkrocklaw.com
Secondary: Tanya@linkrocklaw.com
Secondary: Eservice@linkrocklaw.com

Trial Counsel for Plaintiff/Counter-Defendant Jeffrey Epstein

SERVICE LIST

Jack Scarola Searcy, Denny, Scarola, Barnhart & Shipley, P.A. 2139 Palm Beach Lakes Boulevard West Palm Beach, FL 33409 mep@searcylaw.com jsx@searcylaw.com scarolateam@searcylaw.com *Co-Counsel for Defendant/Counter-Plaintiff Bradley J. Edwards*	Nichole J. Segal Burlington & Rockenbach, P.A. Courthouse Commons, Suite 350 444 West Railroad Avenue West Palm Beach, FL 33401 njs@FLAppellateLaw.com kbt@FLAppellateLaw.com *Co-Counsel for Defendant/Counter-Plaintiff Bradley J. Edwards*
Bradley J. Edwards Edwards Pottinger LLC 425 N. Andrews Avenue, Suite 2 Fort Lauderdale, FL 33301-3268 brad@epllc.com staff.efile@pathtojustice.com *Co-Counsel for Defendant/Counter-Plaintiff Bradley J. Edwards*	Marc S. Nurik Law Offices of Marc S. Nurik One E. Broward Boulevard, Suite 700 Ft. Lauderdale, FL 33301 marc@nuriklaw.com *Counsel for Defendant Scott Rothstein*
Jack A. Goldberger Atterbury, Goldberger & Weiss, P.A. 250 Australian Avenue S., Suite 1400 West Palm Beach, FL 33401 jgoldberger@agwpa.com smahoney@agwpa.com *Co-Counsel for Plaintiff/Counter-Defendant Jeffrey Epstein*	