

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

JUDGE: CROW

**PLAINTIFF JEFFREY EPSTEIN'S MOTION FOR
CLARIFICATION/RECONSIDERATION OF THIS COURT'S ORDER
DATED MAY 17, 2013**

Plaintiff/Counter-Defendant Jeffrey Epstein ("Epstein"), by and through his undersigned counsel and pursuant to Rule 1.530 of the *Florida Rules of Civil Procedure*, hereby seeks clarification/reconsideration of this Court's Order dated May 17, 2013, in which the Court directs Epstein to produce a privilege log as to the requested items/information for which he asserted his Constitutional Privilege Against Self-Incrimination in response to Defendant/Counter Plaintiff Bradley Edwards's Net Worth Interrogatories and Requests for Production (hereinafter "the Order"). In support thereof, Epstein states:

SUMMARY OF PROCEEDINGS

On February 22, 2013, Epstein filed his responses to Edwards's Net Worth Interrogatories and Request for Production. On February 25, 2013, in response, Edwards filed a Motion to Strike Untimely Objections to Financial Discovery. In that Motion, Edwards moved to strike all objections and privileges raised by Epstein *except* his Constitutional Privilege. On March 11, 2013, this Court entered its Order on Edwards's Motion in which it overruled all objections other than privilege:

[t]he 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 . . . [t]he 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) are overruled. . . The Counter-Defendant shall not be required to list any documents he contends are privileged pursuant to the V, VI and XIV Amendments.

March 11, 2013 Order on Counter-Plaintiff's Motion to Strike Untimely Objections to Financial Discovery, attached hereto as "Exhibit A" (emphasis added). In that Order, this Court explicitly, and correctly, ruled that Epstein *shall not* file a privilege log as to any documents he contends are Constitutionally Privileged. Edwards did not, and has not, challenged that portion of this Court's Order.

However, the Order entered by the Court on May 17, 2013 appears to compel Epstein to create a privilege log as to those items/answers for which he asserted his Constitutional Privilege against Self-Incrimination. A true and correct copy of the May 17, 2013 Order is attached hereto as "Exhibit B." As such, Epstein requests that this Honorable Court clarify its May 17, 2013 ruling with respect to the Constitutional Privilege issue already adjudicated in its March 11, 2013 Order, or alternatively to reconsider its May 17, 2013 Order if it is, in fact, compelling Epstein to provide a privilege log with respect to those items/answers for which he asserted his Fifth Amendment Privilege against Self-Incrimination.

ARGUMENT

A motion for clarification is the equivalent of a motion for rehearing. *Kirby v. Speight*, 217 So. 2d 871, 872 (Fla. 1st DCA 1969); *Dambro v. Dambro*, 900 So. 2d 724, 725-26 (Fla. 4th DCA 2005). As such, a motion for clarification is filed in accordance with Rule 1.530(b) of the *Florida Rules of Civil Procedure*. "The purpose of a Motion for a Rehearing is to give the trial court an opportunity to consider matters which it failed to consider or

overlooked.” *Pingree v. Quaintance*, 394 So. 2d 161, 162 (Fla. 1st DCA 1981). Here, Epstein is requesting that this Court issue another opinion in which it more clearly delineates its ruling with respect to the privilege log and Epstein’s asserted Constitutional Privilege, as pursuant to the most recent Order it appears that Epstein is being forced to waive his Constitutional Privilege.

The law is clear that a party may invoke his Fifth Amendment Privilege against Self-Incrimination if he has reasonable grounds to believe discovery answers would furnish a link in a chain of evidence needed to prove a crime against him. *Rainerman v. Eagle Nat. Bank of Miami*, 541 So. 2d 740 (Fla. 3d DCA 1989). Epstein’s assertion of his Constitutional Privilege is “a fundamental principle.” *Piscotti v. Stephens*, 940 So. 2d 1217 (Fla. 4th DCA 2006):

It need not be probable that a criminal prosecution will be brought or that the witness’s answer will be introduced in a later prosecution; the witness need only show a realistic possibility that the answers will be used against him.

Id. at 1220 (quoting *Magid v. Winter*, 654 So. 2d 1037, 1039 (Fla. 4th DCA 1995)). Here, the mere act of providing information in a privilege log would constitute communicative testimony itself that is protected from discovery. *Id.* See also *Wehling v. Columbia Broadcasting Sys.*, 608 F.2d 1084, 1086 (5th Cir. 1979) (“Even if the rules did not contain specific language exempting privileged information, it is clear that the Fifth Amendment would serve as a shield to any party who feared that complying with discovery would expose him to a risk of self-incrimination. The fact that the privilege is raised in a civil proceeding rather than a criminal prosecution does not deprive a party of its protection.”) (citing *Lefkowitz v. Cunningham*, 431 U.S. 801, 805 (1977)). A witness invoking the privilege against self-incrimination is not required to establish that criminal prosecution is probable or

imminent; instead, the court must only be satisfied that there is a reasonable possibility that the witness' answer will be used against him. *See In re Keller Financial Services of Florida, Inc.*, 259 B.R. 391 (Bkrcty. M.D. Fla. 2000); *see also Meek v. Dean Witter Reynolds, Inc.*, 458 So. 2d 412 (Fla. 4th DCA 1984) (finding a witness need only show a realistic possibility that an answer to the question will be used against him or her). As demonstrated more fully below, Epstein has already met this burden.

Epstein provided the following response to the Requests for Production for which he is asserting his Constitutional Privilege:

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 (1976). “[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 future 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.

See Epstein's Responses to Edwards's Net Worth Discovery Request for Production. 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, both in his “privilege log” filed in response to the Court’s March 11, 2013 Order, and by argument and proffer through counsel at each hearing held by the Court on this issue. Specifically, Epstein’s “substantial and reasonable basis for concern” derives from the fact that Edwards is actively and vigorously seeking to invalidate a Non-Prosecution Agreement entered into between Mr. Epstein and the United States Government (08-cv-80736 *Doe v. United States of America*). A portion of the Government’s

investigation, and the Non-Prosecution Agreement which Edwards seeks to invalidate, include allegations of financial crimes. As such, 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 which could, according to the Government, include financial crimes. Therefore, Epstein must, and will continue to, assert to his rights as afforded to him by the Constitution. *See Piscotti v. Stephens*, 940 So. 2d 1217 (Fla. 4th DCA 2006); *Urbanek v. Urbanek*, 50 So. 3d 1246 (Fla. 4th DCA 2011).

As this Court is aware, “[t]he Fifth Amendment privilege can be asserted in any proceeding, civil or criminal... in which the witness reasonably believes that the information sought, or discoverable as a result of his testimony, could be used in a subsequent state or federal criminal proceeding.” *Kastigar v. U.S.*, 406 U.S. 441, 444–45, (1972). Moreover, “[t]he privilege afforded not only extends to answers that would in themselves support a conviction...but likewise embraces those which would furnish a link in the chain of evidence needed to prosecute the claimant.” *Hoffman v. U.S.*, 341 U.S. 479, 486 (1951). In the case at hand, Epstein was previously convicted and sentenced for certain crimes that may “form the basis of his Fifth Amendment claims.” Likewise, according to Edwards, Mr. Epstein may face future prosecution. Edwards’s own allegations in his Fourth Amended Counterclaim support this assertion, as Edwards himself claims that Epstein is the target of inquiry with respect to additional charges stemming from the very core of facts for which he already stands convicted. Edwards is also vigorously seeking to overturn the Non-Prosecution Agreement between Epstein and the United States Government, and has, on numerous occasions, made allegations of future prosecution against Mr. Epstein. As such, it is irrefutable that Edwards’s own pleadings in this case have proven Epstein’s contention that he has a “substantial and

reasonable basis for concern" of future prosecution. Epstein has, therefore, properly asserted the Fifth Amendment in response to every question/request propounded by Edwards where an answer, if provided, could conceivably "furnish a link in the chain of evidence needed to prosecute the claimant." Accordingly, if the Court's May 17, 2013 Order is compelling Epstein to provide a privilege log with respect to his Constitutional Privileges it is, in essence, forcing Epstein to waive this privilege. *See United States v. Doe*, 465 U.S. 605, 612 (1984); *People v. Traylor*, 23 Cal App.3d 323, 330 (1972) ("If the witness were required to prove the hazards he would be compelled to surrender the very protection the constitutional privilege is designed to guarantee."). *See also In re Rothstein Rosenfeldt Adler, P.A.*, 2011 WL 6067494, *2 (S.D. Fla. 2011) (the court accepted a proffer from witness Deborah Villegas's attorney regarding the possibility of future prosecution, and held that the witness was within her rights to assert her Constitutional Privileges).

Finally, the Court's Order is unclear as to whether or not a privilege log is required for Mr. Epstein's responses to the Net Worth Interrogatories. However, because responses to Interrogatories must be verified; sworn to under Oath, they are irrefutably testimonial in nature, and Epstein should not be compelled to provide a privilege log for the responses for which he asserts his Fifth Amendment Privilege. 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 (1947). 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.

As explained above, 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. Therefore, Epstein will, and must, continue to 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).

CONCLUSION

Accordingly, for all of the reasons delineated above and in reliance upon the applicable law cited herein, Jeffrey Epstein respectfully requests that this Court clarify or reconsider its Court Order dated May 17, 2013, and such other and further relief as this Court deems proper.

WE HEREBY CERTIFY that a true and correct copy of the foregoing was served upon all parties listed below, via Electronic Service, this May 23, 2013.

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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.

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

CASE NO.: 50-2009-CA-040800-XXXX-MBAG
CIVIL DIVISION "AG"

JEFFREY EPSTEIN,

Plaintiff,

v.

SCOTT ROTHSTEIN, etc., et al.,

Defendant(s).

**ORDER DIRECTING PLAINTIFF TO PRODUCE A PRIVILEGE LOG
FOR AN IN CAMERA REVIEW OF PLAINTIFF'S ASSERTED PRIVILEGES
(AND SETTING STATUS CONFERENCE)**

THIS CAUSE came before the Court on Plaintiff/Counter-Defendant Jeffrey Epstein's (the "Plaintiff") Objections to Defendant/Counter-Plaintiff's Request for Production and Net Worth Interrogatories. This Court, having carefully reviewed the Plaintiff's objections and all applicable legal authority, and being otherwise fully advised in the premises does hereby determine as follows:

BACKGROUND

On March 12, 2013, this Court entered an Order requiring the Plaintiff to file a detailed privilege log in response to Defendant/Counter-Plaintiff Bradley Edwards' (the "Defendant") financial discovery requests for document production. The Order stated that the Plaintiff was not required to list any documents on the privilege log that he asserted were protected by his constitutional privilege against self-incrimination. The Plaintiff responded to this Court's Order by filing a privilege log wherein he asserted a Fifth Amendment privilege against self-incrimination as to essentially every document request, as well as asserting that many documents were protected by attorney-client privilege, accountant-client privilege, trade secret privilege,

EXHIBIT B

work product privilege, and third party privacy rights. In addition to asserting the aforementioned privileges against the Defendant's document production requests, the Plaintiff also asserted the same privileges against many of the Defendant's interrogatories.

The Plaintiff's Fifth Amendment objections were based upon the assertion that the identification and certification of the existence of certain documents would be self-incriminating. Because of the Plaintiff's assertion that he could not identify the requested documents, the Plaintiff did not provide to this Court a basis upon which to substantiate his non-constitutional claims of privilege. On April 15, 2013, the Defendant filed his Response to Epstein's Objections to Edwards' Request for Production and Net Worth Interrogatories wherein he requested that this Court require a new privilege log for an *in camera* review to determine whether the Plaintiff's non-constitutional claims of privilege are valid.

LEGAL ANALYSIS

The Plaintiff has asserted a Fifth Amendment privilege against self-incrimination as to essentially every request to produce documents and against the majority of the Defendant's interrogatory requests. Because the validity of the Plaintiff's Fifth Amendment objections are based upon the nature of the underlying act of compulsion, the Plaintiff's objections are best divided into three categories: (A) document requests directed towards the Plaintiff personally, (B) document requests directed towards the Plaintiff as a custodian of business records, and (C) interrogatory requests. Accordingly, each of these categories is considered in turn.

A. Fifth Amendment Privilege in the Context of the Plaintiff's Production of Documents as an Individual.

The Plaintiff has responded to virtually every document request from the Defendant by asserting his Fifth Amendment privilege against self-incrimination. A litigant may assert, in the context of civil litigation, a Fifth Amendment privilege against self-incrimination as to

testimonial and communicative evidence. *See Fisher v. United States*, 425 U.S. 391 (1976); *Boyle v. Buck*, 858 So. 2d 391, 392-93 (Fla. 4th DCA 2003). With respect to the production of documents, however, the Fifth Amendment will not apply simply because the requested documents will incriminate the respondent. *See Fisher*, 425 U.S. at 409-10. Instead, the Fifth Amendment shields a respondent from document production when the compulsory *act of production itself* is equivalent to incriminating testimonial evidence. *See id.* at 411-12.

Before a court can consider whether the act of producing documents is equivalent to incriminating testimony, a court must first determine whether the act of production results in any testimony at all. *See id.* at 392-99. The United States Supreme Court considered circumstances where the act of production was not testimonial in *Fisher v. United States*. *Id.* at 411-12. In *Fisher*, the requested documents consisted of work papers belonging to an accountant but in the possession of the respondent-taxpayer. *Id.* at 395. The Court determined that the respondent-taxpayer's act of producing the documents was not testimonial because (1) the documents were not prepared by the taxpayer, (2) the documents were of the type typically created by accountants, (3) the documents had been created voluntarily, and (4) the existence and location of the requested documents were a foregone conclusion. *Id.* at 411. The Court considered the act of production in *Fisher* to be an act of surrender, not an act of testimony. *See id.* at 411-12.

The Supreme Court considered a different set of facts where the act of producing documents was testimonial in *United States v. Hubbell*. *United States v. Hubbell*, 530 U.S. 27 (2000). In *Hubbell*, the government requested over 13,000 pages worth of documents without knowing what the discovery request would produce. *See id.* at 41-42. The Court described the facts that influenced its decision to classify the respondent's production of documents as testimonial:

Given the breadth of the description of the 11 categories of documents called for by the subpoena, the collection and production of the materials demanded was tantamount to answering a series of interrogatories asking a witness to disclose the existence and location of particular documents fitting certain broad descriptions. The assembly of literally hundreds of pages of material in response to a request for “any and all documents reflecting, referring, or relating to any direct or indirect sources of money or other things of value received by or provided to” an individual or members of his family during a 3-year period . . . is the functional equivalent of the preparation of an answer to either a detailed written interrogatory or a series of oral questions at a discovery deposition. Entirely apart from the contents of the 13,120 pages of materials that respondent produced in this case, it is undeniable that providing a catalog of existing documents fitting within any of the 11 broadly worded subpoena categories could provide a prosecutor with a “lead to incriminating evidence,” or “a link in the chain of evidence needed to prosecute.

Id. Notably, the government argued in *Hubbell* that the respondent was a sophisticated businessman and, like the accountant’s working papers in *Fisher*, it was expected that the respondent would have the type of tax and accounting documents it had requested. *See id.* at 44. The Court rejected this analogy by stating that, unlike in *Fisher*, the government had no independent prior knowledge of the existence or whereabouts of the documents produced by the respondent. *See id.* at 44-45 (“The Government cannot cure this deficiency through the overbroad argument that a business man such as the respondent will always possess general business and tax records that will fall within the broad categories described in this subpoena.”). The Court noted that the nature of the testimony inherent in the act of production was the respondent’s certification as to the existence, custody, control, and authenticity of the documents. *Id.* at 32, 37.

The Supreme Court has recognized that determining whether an act of production is incriminating necessarily depends upon case-specific facts and circumstances. *See Fisher*, 425 U.S. at 410. In the instant case, the Defendant’s requests for production vary in scope. Some of the Defendant’s document requests are broad, which resemble the requests in *Hubbell*, and some

of the document requests are specific, which resemble the requests in *Fisher*. Further, some of the Defendant's document requests are of the type that the Plaintiff is certain to possess, as was the case in *Fisher*, while other document requests will likely generate an unknown result, as was the case in *Hubbell*. Thus, this Court finds that some of the Defendant's requests for production have a high probability of resulting in testimony on behalf of the Plaintiff and some of the requests for production have a low probability of resulting in testimony on behalf of the Plaintiff. Even if the Plaintiff's act of production does equate to testimony, however, the Plaintiff must still show, via an *in camera* inspection, that the Plaintiff has reasonable cause to fear that the testimony inherent in the act of producing the documents would be self-incriminating. See *Hoffman v. United States*, 341 U.S. 479, 486 (1951); *Austin v. Barnett Bank*, 472 So. 2d 830, 830 (Fla. 4th DCA 1985).

B. Fifth Amendment Privilege in the Context of the Plaintiff's Production of Documents as a Custodian of Business Records.

The Plaintiff has raised Fifth Amendment objections to document requests targeted towards business records in his possession. A corporation (or other artificial business entity) has no Fifth Amendment rights. See, e.g., *Grant v. United States*, 227 U.S. 74 (1912); *Hale v. Hinkel*, 201 U.S. 43 (1906); *Fineberg v. United States*, 392 F.2d 417 (9th Cir. 1968). In the rare situation where a custodian of business records cannot produce requested documents without the act of production qualifying as self-incriminating testimony under the analysis of *Fisher* and *Hubbell*, the business is not relieved of the obligation to comply and must find or appoint another agent to produce the documents.¹ See *Bellis v. United States*, 417 U.S. 85 (1974); *In re Grand Jury Subpoenae Duces Tecum*, 769 F.2d 52, 57 (2d Cir. 1985). Thus, this Court finds that even if some of the Defendant's requests for business documents results in testimony on behalf of the

¹ A sole proprietorship may be the only exception to this rule. See *in re Matter of Grand Jury Empanelled*, 597 F.2d 851, 859 (3d Cir. 1979).

Plaintiff, and even if this Court determines that the Plaintiff's act of producing such business documents is self-incriminating, the underlying business entity that owns the documents cannot be relieved of the obligation to produce.

C. Fifth Amendment Privilege in the Context of the Plaintiff's Answers to Interrogatories.

The Plaintiff has asserted his Fifth Amendment privilege against self-incrimination in connection with many of the Defendant's interrogatory requests. Unlike a request to produce documents, the testimony inherent in an interrogatory is the answer itself. Therefore, this Court's analysis towards the Plaintiff's objections involves a standard Fifth Amendment analysis focused on the nature of the question asked and whether the respondent has reasonable cause to fear that answering the question may result in self-incrimination.² *Hoffman*, 341 U.S. at 486. To sustain the privilege "it need only be evident from the implications of the question, in the setting in which it is asked, that a responsive answer to the question or an explanation of why it cannot be answered might be dangerous because injurious disclosure could result." *Id.* at 486-87. A court may compel an answer if, after considering the foregoing, it clearly appears to the court that the witness (or in this case, the respondent) was mistaken. *See id.* at 486 (citing *Temple v. Commonwealth*, 75 Va. 892, 899 (1880)).

AND RULING

With respect to the Plaintiff's act of producing documents, even if the Plaintiff's actions do qualify as individual testimony under *Fisher* and *Hubbell*, this Court must still determine whether the Plaintiff has a reasonable basis to fear self-incrimination as a result of the testimony inherent in his act of document production. *Austin v. Barnett Bank*, 472 So. 2d 830, 830 (Fla. 4th

² Article I, Section 9, of the Florida Constitution provides protection no greater than that afforded under the federal constitution. *See Commitment of Smith v. State*, 827 So. 2d 1026 (Fla. 2d DCA 2002); *State v. Tsavaris*, 382 So. 2d 56, 68 (Fla. 2d DCA 1980).

DCA 1985) (“Where a claim of privilege is asserted, the trial court should hold an *in camera* inspection to review the discovery requested and determine whether assertion of the privilege is valid.”) Further, because the Plaintiff has asserted that providing the Court with a standard privilege log to substantiate his claims of privilege would incriminate him, this Court must conduct an *in camera* inspection to both preserve the Plaintiff’s constitutional rights and to determine whether the privilege does in fact apply. *See Bailey v. State*, 100 So. 3d 213, 213 (Fla. 3d DCA 2012); *Del Carmon Calzon v. Capital Bank*, 689 So. 2d 279, 281 (Fla. 3d DCA 1996); *State Dep’t of Ins. v. Schuler*, 510 So. 2d 622, 623 (Fla. 3d DCA 1987) (noting a “mere conclusory assertion that [the respondent’s] constitutional privileges against self-incrimination are implicated is insufficient to discharge [the respondent’s] burden of demonstrating that there exists a reasonable or realistic possibility that production of [the respondent’s] remaining business records will lead to criminal prosecution). Therefore, a final determination on the validity of the Plaintiff’s Fifth Amendment and other non-constitutional claims of privilege will first require the Plaintiff to provide this Court with a privilege log substantiating his fear of self-incrimination under *Fisher* and *Hubbell* via an *in camera* inspection as well as the basis for the other privilege objections.

This Court finds that even though some of the Defendant’s requests for production are unlikely to result in testimony on behalf of the Plaintiff, in the interest of preserving the Plaintiff’s constitutional rights, this Court will conduct an *in camera* inspection as to all of the disputed documents. In the event that this Court is unable to determine from an *in camera* inspection of a privilege log whether the Plaintiff’s claims of privilege are valid, the Court may hold an ex-parte hearing with the Plaintiff to further clarify the Plaintiff’s objections and allow the Plaintiff to further substantiate his claims of privilege. Finally, because the Plaintiff’s

assertion of Fifth Amendment privilege has heretofore caused the Plaintiff to fail to substantiate his assertions of non-constitutional privileges, this Court finds that the Plaintiff shall include in a privilege log the basis for the Plaintiff's non-constitutional claims of privilege in addition to the basis for his Fifth Amendment claim of privilege. It is therefore

ORDERED and ADJUDGED that the Plaintiff will provide to this Court for an *in camera* review a detailed privilege log for all documents not previously and fully provided to the Defendant containing: (1) a list of the requested documents which (2) identifies each document, (3) clearly indicates all asserted privileges for each document, and (4) describes the basis for each asserted privilege within thirty (30) days from the date of this Order. A Status Conference is hereby scheduled for **Thursday, May 23, 2013 at 8:45 a.m., Courtroom 9C, Palm Beach County Courthouse, 205 North Dixie Highway, West Palm Beach, Florida.**

DONE and ORDERED in Chambers in West Palm Beach, Palm Beach County, Florida this 17th day of May, 2013.

DAVID CROW
CIRCUIT JUDGE

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