

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

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

JANE DOE NO. 2,

Plaintiff,

vs.

JEFFREY EPSTEIN,

Defendant.

Related cases:

08-80232, 08-80380, 08-80381, 08-80994,
08-80993, 08-80811, 08-80893, 09-80469,
09-80591, 09-80656, 09-80802, 09-81092

OMNIBUS ORDER

THIS CAUSE is before the Court on Defendant Epstein's Motion For Reconsideration and/or Request for Rule 4 Review and Appeal of Portions of the Magistrate's Order Dated February 4, 2010 (D.E. #477); and Defendant's Motion for Reconsideration and/or Request for Rule 4 Review and Appeal of Magistrate's Order Dated March 4, 2010 (D.E. #488). For the following reasons said Motions are viewed by this Court as requests for reconsideration and are denied. Should Defendant wish to file a formal appeal to the District Court with regard to this Order and/or any or both of the underlying Orders, Defendant may do so within ten (10)

days from the date hereof.

In the first Motion (D.E.#477) Epstein seeks reversal of certain portions of the undersigned's Order entered February 4, 2010 which granted in part and denied in part Jane Doe's Motion to Compel production of various materials filed July 20, 2009. Specifically Epstein takes issue with that portion of the Order which compelled production of discovery from state and federal prosecutors in the criminal case against him, his recent tax returns, and his passport. The Court stands behind each of these decisions for the reasons stated in its Order and is not persuaded by any of Epstein's arguments to the contrary.

The first category of documents (Requests 7, 9, and 10) consist of documents the government itself gave to Epstein. Epstein's primary objection was based on the Fifth Amendment, which the undersigned overruled on the basis of the "foregone conclusion" doctrine, which provides there can be no self-incrimination by production where the "existence and location of the documents...are a 'foregone conclusion' and [the claimant]...adds little or nothing to the sum total of the Government's information by conceding that he in fact has the documents." In re Grand Jury Subpoena, 383 F.3d 905, 910 (9th Cir. 2004). Other objections raised by Epstein included attorney-client, work product, and privacy concerns, each of which were also addressed and rejected. Epstein's final argument, raised now for the first time, concerns settlement discussion confidentiality. Because Epstein never presented this argument to the undersigned, it is inappropriate to raise it now for the first time.

Williams v. McNeil, 557 F.3d 1287, 1292 (11th Cir. 2009). Even were the Court to consider the argument on its merits, for the reasons explained in Jane Doe's Response Memorandum (D.E. #485), pp.4-9, the Court finds said argument without merit.

The second and third category of documents concern production of Epstein's recent tax returns and passport. The undersigned likewise finds no basis for reversal of this decision. Rajah v. Mukasey, 544 F.3d 427, 442 (2d Cir. 2008)(noting that tax records and passports which are considered by the courts to be "required records," are as a matter of law not subject to Fifth Amendment protection). Epstein cites certain cases from the Second Circuit which provide for a "compelling need" standard to obtain tax returns. This claim of a higher standard applying to tax returns, however, has been rejected in the Eleventh Circuit. See Maddow v. Proctor & Gamble Co., Inc., 107 F.3d 846, 853 (11th Cir. 1997); United States v. Certain Real Property Known as and Located at 6469 Polo Pointe Way, 444 F.Supp.2d 1258, 1263-1264 (S.D. Fla. 2006). Accordingly, Epstein's Motion for reconsideration is denied.

In the second Motion (D.E. #488) Epstein seeks reversal of a portion of the undersigned's Order entered March 4, 2010. The March 4, 2010 Order concerns Defendant's blanket assertion of the Fifth Amendment privilege in response to Plaintiff's interrogatories and production requests seeking net worth discovery. The Order upheld each of Epstein's objections except for those raised in response to

Production Request Number 1 seeking all federal and state tax returns, including all W-2 forms and 1099 forms and schedules for the five year period from 2003-2008. Epstein's objections in this regard were the same objections raised in response to the same request contained in Jane Doe's July 20, 2009 Request for Production, which this Court ordered previously ordered produced over Epstein's objections and a request for reconsideration.

The same reasons set forth above in connection with the undersigned's February 4, 2010 Order denying Epstein's request to reconsider her decision compelling production of his tax returns apply equally here, and shall not be repeated. Suffice it to say that for those reasons, Epstein's Motion for Reconsideration of the Order entered March 4, 2010, is denied. In accordance with the above and foregoing, it is hereby,

ORDERED AND ADJUDGED as follows:

(1) Defendant Epstein's Motion For Reconsideration and/or Request for Rule 4 Review and Appeal of Portions of the Magistrate's Order Dated February 4, 2010 (D.E. #477) is **DENIED**. Should Defendant wish to file a formal appeal to this Order and/or to the underlying February 4, 2010 Order, Defendant may do so within ten (10) days from the date hereof; and

(2) Defendant's Motion for Reconsideration and/or Request for Rule 4 Review and Appeal of Magistrate's Order Dated March 4, 2010 (D.E. #488) is **DENIED**. Should Defendant wish to file a formal appeal to this Order and/or to the

underlying March 4, 2010 Order, Defendant may do so within ten (10) days from the date hereof .

DONE AND ORDERED this April 1, 2010, in Chambers, at West Palm Beach, Florida.



LINNEA R. JOHNSON
UNITED STATES MAGISTRATE JUDGE

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