

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 MOTION TO COMPEL
COUNTER-PLAINTIFF BRADLEY J. EDWARDS TO IDENTIFY BATES NUMBERS
OF DOCUMENTS PRODUCED**

Plaintiff/Counter-Defendant Jeffrey Epstein ("Epstein") moves to compel Counter-Plaintiff Bradley J. Edwards' ("Edwards") to identify the Bates numbers of the documents he produced in this case, and states:

INTRODUCTION

On the one hand, Edwards argues that Epstein should not have access to or use the documents contained on the disc its current trial counsel discovered in Fowler White's records which contained approximately 27,542 e-mails consecutively Bates stamped. On the other hand, Edwards claims that he produced to Epstein more than 21,000 pages of e-mails that were contained on that disc. That production occurred, however, more than seven years ago in 2011 when Epstein was represented by the Fowler White firm. The disc is now under seal and Epstein's request for an *in camera* review of 47 e-mails is currently pending before the Court.

Edwards has indisputably produced documents that are identified on his privilege log; specifically, the documents he produced in May 2012. Epstein, however, is unsure if Edwards produced other documents that he now claims are privileged, including the 47 exhibits which are the subject of his request for an *in camera* review. Because Epstein's current trial counsel did not represent Epstein in 2011, they are unable to determine which documents, in fact, were produced. Epstein's counsel have made repeated informal requests to Edwards' counsel to identify the documents by Bates number that Edwards produced, but Edwards' counsel has refused to do so. Accordingly, Epstein respectfully moves this Court to compel Edwards to identify by Bates number the documents he produced in this case.

ARGUMENT

Edwards has made the following representations about his production in this case:

- March 5, 2018, Edwards' Motion to Strike Epstein's Untimely Supplemental Exhibits and to Strike All Exhibits and Any Reference to Documents Containing Privilege Materials Listed on Edwards' Privilege Log (D.E. 1251). Edwards claimed that he produced **21,282 pages** to Epstein.
 - January 25, 2011 - Farmer Jaffe produced 8,408 pages of non-privileged documents to Epstein;
 - February 23, 2011 - Farmer Jaffe produced 12,711 pages to Epstein divided into two separate categories: 5,027 pages of "attorneys' eyes only" documents and 7,684 pages of "irrelevant" documents; and
 - May 7, 2012 - Edwards produced 163 pages to Epstein.
- March 8, 2018, Edwards' timeline provided to the Court during a hearing (**Exhibit A**):
 - February 23, 2011 – Farmer Jaffe produced **thousands of emails** to Epstein including over 5,000 where privilege had been previously claimed and was now being produced as "attorneys' eyes only."
 - May 7, 2012 – Edwards produced 163 pages to Epstein.
- March 19, 2018, Farmer Jaffe's Motion for Issuance of an Order to Show Cause filed *In re Rothstein Rosenfeldt Adler, P.A.*, United States Bankruptcy Court, Southern District of Florida, Case No. 09-34791 (Br. D.E. 6328). Farmer Jaffe

claimed that “**21,282 pages** of emails have been permissibly and lawfully provided to Epstein”:

- January 25, 2011 – Farmer Jaffe produced 8,408 pages of non-privileged e-mails to Epstein;
- February 23, 2011 – Farmer Jaffe produced 12,711 pages to Epstein divided into two separate categories: 5,027 pages of “attorneys’ eyes only” documents and 7,684 pages of “irrelevant” documents; and
- May 8, 2012 – Edwards produced 163 pages to Epstein.

If Edwards has already produced the 47 exhibits which are the subject of Epstein’s request for the Court’s *in camera* review, then there is no work for this Court to do. Neither Epstein nor the Court, however, can make that determination based simply on Edwards’ broad statements that he has *not* produced any documents from his privilege log. As stated above, to the contrary, Edwards *has* produced documents from his privilege log. The extent of what he has produced, however, is unknown because Epstein’s current counsel did not represent Epstein when the documents were produced and they cannot determine from Fowler White’s files what was actually produced in this case. To clarify for both Epstein and the Court, Epstein’s counsel asked Edwards’ counsel on multiple occasions to identify by Bates number all documents that were produced. Edwards’ counsel, however, refused every request to do so. It will save the Court time and not waste judicial resources if a determination can first be made of what Bates numbers, in fact, Edwards allegedly produced, thereby eliminating the Court’s review if documents have, in fact, been produced.

CONCLUSION

Accordingly, Epstein respectfully requests that the Court order Edwards to identify by Bates number the documents he has allegedly produced in this case.

CERTIFICATE OF SERVICE

I certify that the foregoing document has been furnished to the attorneys listed on the Service List below on June 21, 2018, through the Court's e-filing portal pursuant to Florida Rule of Judicial Administration 2.516(b)(1).

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EXHIBIT A

NOT A CERTIFIED COPY

Edwards v. Epstein Timeline

April 17, 2010	Epstein propounded a broad subpoena to the Trustee for RRA as an interested party in the bankruptcy case of In re: Rothstein Rosenfeldt Adler, 09-34791-RBR, requesting tens of thousands of emails (the subpoena was directed to the bankruptcy trustee because the trustee was in possession of all RRA emails). Epstein filed a Motion to Compel that production from the trustee. DE 807
July 19, 2010	LM (one of Epstein's victims) filed an objection and amended motion for protective order, DE 819, explaining that the emails requested were barred from disclosure based on privilege and relevance grounds.
August 13, 2010	Judge Rey in the bankruptcy action entered an order regarding production of the emails to a special master, Judge Carney, appointed to oversee the emails produced and to prepare a privilege log. DE 888
September 20, 2010	After having received more than 27,000 emails Special Master Carney moved for clarification of the Order, and made suggestions that LM's attorneys which included Edwards were in a better position to create a privilege log.
September 27, 2010	Edwards moved for protective order through counsel Jack Scarola, adopting LM's arguments for a protective order and invoking work-product privilege. DE 1022.
September 30, 2010	LM joined in that DE 1022 motion and requested further clarification. DE 1038.
October 13, 2010	Hearing on Motion to Clarify before Robert Carney
October 15, 2010	The bankruptcy court entered an Order which clarified its earlier Order. DE 1068, requiring that the trustee provide the emails at issue to Farmer Jaffe Weissing Edwards Fistos Lehrman (Edwards's firm at the time which was representing LM) and requesting FJWEFL prepare the log. The order also provided a procedure for the special master to hold a hearing about assertions of privilege. Berger Singerman as counsel for the RRA Bankruptcy Trustee delivers the disc to Fowler White to make copies for delivery to FJWEFL to prepare privilege log.
October 20, 2010	Bankruptcy court cancelled the hearing on the motion for protective order. DE 1077.
November 23, 2010	Epstein files amended privilege log.
November 30, 2010	Judge Ray's Order: [T]he law firm of Fowler White Burnett, P.A., will print a hard copy of all of the documents contained on the discs with Bates numbers added, and will provide a set of copied, stamped documents to the Special Master and an identical set to Farmer, who will use same to create its privilege log... <u>Fowler White will not retain any copies of the documents contained on the discs provided to it, nor shall any images or copies of said documents be retained in the memory of Fowler White's copiers. Should it be determined that Fowler White or Epstein retained images or copies of the subject documents on its computer or otherwise, the</u>

	<u>Court retains jurisdiction to award sanctions in favor of Farmer, Brad Edwards or his client.</u>
December 16, 2010	LM filed a motion requesting a stay of the Order directing the preparation of a privilege log until after the time when the State court ruled on the then pending Motion for Summary Judgment. DE 1236
December 22, 2010	Bankruptcy court entered an order extending the time for production of the privilege log until January 31, 2011. DE 1260
January 26, 2011	FJWEFL produced a privilege log, and the sufficiency of that log was challenged by Epstein in the bankruptcy court. DE 1442.
February 8, 2011	Epstein Motion to Compel/Motion to Determine if Privilege Claims are Waived for failure to provide a privilege log.
February 23, 2011	FJWEFL produced an updated privilege log (the current privilege log) detailing the emails where privilege was being maintained, and also produced thousands of emails including over 5,000 where privilege had been previously claimed and was now being produced "attorney's eyes only." Those are NOT the emails that were on the privilege log as those on the log were never turned over.
March 30, 2011	Judge Crow entered an order staying the subpoena to the trustee. See Scarola's letter to Judge Carney.
May 27, 2011	Order setting hearing on all motions relating to discovery and privilege issues for July 13, 2011.
April 7, 2011	Letter from Scarola to Silver regarding agreement to turn 27,000 documents over to Conrad Scherer
April 8, 2011	Letter from Scherer to Scarola confirming agreement regarding emails.
April 10, 2011	James Silver and Scarola email confirmation of agreement to be presented to the court on April 11, 2011.
April 11, 2011	Email from Brad Edwards to paralegal stating: According to our agreement with Scherer, we are going to turn over "for attys eyes only" all of the emails produced to us that fall into a category requested in their duces tecum. We told them we will produce that by way of disc. I know that we have scanned in the documents that we produced to Epstein already, so those will be easy to place on disc. We need to scan those documents that have not yet been turned over into our system but first I want to review them to see if any do not fall into a requested category before scanning them in to be produced.
June 7, 2011	Letter from Scherer to Jaffe regarding the copying of 27,000 emails
June 24, 2011	Jonathan Castanu of Conrad & Scherer picks up the hard disk drive containing RRA emails relating to Epstein documents.
July 12, 2011	Epstein's Motion for Leave to Use attorneys eyes only documents produced under confidentiality agreement. (Granted by Agreement)— Does not include privileged documents.
July 14, 2011	Edwards protective order granted. Epstein request for all emails is overbroad and not necessarily calculated to lead to admissible evidence.

March 9, 2012	Epstein Motion to Compel and Amend Protective Order relating to the subpoena to the Bankruptcy Trustee
April 10, 2012	Order requiring Edwards to produce any non-privileged documents as identified in paragraph 13 of Edwards's Motion to Compel and Amend Protective Order. (Communications with Fed. Gov't and Press)
April 11, 2012	Epstein files Edwards Privilege Log in this case.
April 11, 2012	Epstein Motion to Compel production of documents from Edwards and for Sanctions.
April 23, 2012	Fowler White Motion to Withdraw
May 2, 2012	Agreed Order on Fowler White Withdraw
May 7, 2012	Edwards produces 163 pages of additional responsive documents in compliance with April 10, 2012 Order (Communications with Fed. Gov't and press)
May 8, 2012	Crow Order requiring better privilege log
May 15, 2012	Edwards Motion for Clarification on discovery issues.
May 15, 2012	Epstein Motion to Compel Discovery Responses and for Sanctions
May 30, 2012	Epstein Amended Motion to Compel Discovery Responses and for Sanctions
June 19, 2012	Order Setting hearing on Motion for Clarification.
August 3, 2012	Hearing on motion for clarification and discovery issues.
August 16, 2012	Epstein dismisses case against Edwards without prejudice.
August 17, 2012	Crow grants our Motion for Clarification and vacates his 5/8/12 order and orders, inter alia, that we file an amended privilege log within 10 days. Addressing only communications between RRA and Federal Government or news reporters.