

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 9:10-CV-81111-WPD

M.J.,

Plaintiff,

Vs.

JEFFREY EPSTEIN, and  
SARAH KELLEN,

Defendants.

/

**M.J.'S MOTION FOR PRESERVATION OF EVIDENCE RELATING TO  
CORRESPONCE WITH THE U.S. ATTORNEYS OFFICE.**

Plaintiff, M.J., hereby files this motion to have defendant Epstein ordered to preserve evidence – specifically (1) e-mail correspondence between Matthew Menchel at the United States Attorney's Office and Lilly Ann Sanchez, an Epstein attorney, regarding Epstein's plea negotiation over federal and state sex offenses, and (2) correspondence between the United States Attorney's Office and Ken Starr, another Epstein attorney, regarding Epstein's federal and state sex offenses and the prosecution or non-prosecution of such offenses. In previous litigation in this Court, Epstein did not produce this correspondence, despite being under court order to do so. This gives rise to a reasonable inference that Epstein may be deliberately withholding this correspondence, possibly with the intent to deny its existence. Accordingly, the Court should specifically order Epstein to preserve any such correspondence as possible evidence in M.J.'s case.

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### **FACTUAL BACKGROUND**

On July 20, 2009, plaintiff Jane Doe (a victim of Epstein's sexual abuse similar to M.J.) filed a motion to compel production of various previously-requested documents, including discovery provided to Epstein by state and federal prosecutors in the criminal cases against him and correspondence between his criminal defense attorneys and state and federal prosecutors during the criminal investigation. Case no. 9:08-cv-80119, DE210. **(Exhibit 1)** Specifically, her motion sought production of the following:

Request No. 7: All discovery information obtained by you or your attorneys as a result of the exchange of discovery in the State criminal case against you or the Federal investigation against you.

Request No. 9: Any documents or other evidentiary materials provided to local, state, or federal law enforcement investigators or local, state or federal prosecutors investigating your sexual activities with minors.

Request No. 10: All correspondence between you and your attorneys and state or federal law enforcement or prosecutors (includes, but not limited to, letters to and from the States Attorney's office or any agents thereof).

(DE210 at pp. 10-12 (emphases added)). Epstein obtained an extension of time in which to respond and, two-and-a-half months later, on October 6, 2009, Epstein filed an objection to producing these items primarily on Fifth Amendment grounds (DE339).

**(Exhibit 2).** On October 16, 2009, Jane Doe promptly filed a reply in support of her motion (DE354). **(Exhibit 3)** On January 22, 2010, Jane Doe filed a notice that more than 90 days had elapsed since the filing of her motion (DE453). **(Exhibit 4)**

On February 4, 2010, the magistrate judge granted in part and denied in part Jane Doe's motion to compel, specifically ruling that Epstein had to produce the

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discovery provided to him by state and federal prosecutors and the requested correspondence, rejecting Fifth Amendment and other objections raised by Epstein. (case no. 9:08-cv-80119, DE462). (**Exhibit 5**) The magistrate judge specifically granted requests 7, 9, and 10. *Id.* at 10 (“Accordingly, Epstein is ordered to produce the documents subjects to these Requests [i.e., requests 7, 9, and 10] within ten (10) days from the date hereof.”).

Epstein then filed for an extension of time in which to appeal (DE464), (**Exhibit 6**) which Jane Doe opposed on grounds of delay (DE465) (**Exhibit 7**). On February 11, 2010, the Court granted in part and denied in part the extension of time, specifically warning Epstein that “[i]n the event that Magistrate Judge Johnson’s February 4, 2010 Order is affirmed on appeal, Defendant will have three (3) business days from the date of this Court’s order to produce the documents at issue.” (DE468) (**Exhibit 8**). Epstein then ultimately filed his appeal/motion for reconsideration of the magistrate decision on February 26, 2010. (DE477) (**Exhibit 9**). On March 10, 2010, Jane Doe then filed her response in Opposition to Defendant’s Motion for reconsideration. (DE. 485). (**Exhibit 10**)

On April 1, 2010, the magistrate judge rejected Epstein’s challenge, reaffirming his earlier order that “compelled production from state and federal prosecutors in the criminal case against him.” (DE513). (**Exhibit 11**)

On May 6, 2010, the court held a status conference on the appeal (which also involved other consolidated cases raising similar appeals and issues). The Court asked the parties to attempt to reach a resolution of issues surrounding Epstein’s net worth.

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On May 12, 2010, Epstein filed a “Consolidated” Rule 4 Review and Appeal of Portions of the Magistrate Judge’s orders (DE545). (**Exhibit 12**) On May 27, 2010, Jane Doe filed a “protective” response to the consolidated reply, noting that she had previously responded to all of the arguments raised by the appeal and that the “consolidated” appeal did not require any new response from her (DE551). (**Exhibit 13**)

On Friday, June 25, 2010, this Court entered an order affirming the magistrate judge’s discovery orders in all respects (case no. 9:08-cv-80119-KAM, DE572) (**Exhibit 14**) and, as it previously warned Epstein, requiring Epstein to produce the discovery materials within three business days.

At this point, despite having had a year to assemble the requested discovery items and prepare for their production – and more than four months since the Court’s warning to be prepared to produce the documents on three days notice – Epstein began filing motions to restrict production. On Monday evening, June 28, 2010, at approximately 5:11 p.m., Epstein filed a motion for a protective order regarding dissemination of the materials (case no. 9:09-cv-80893, DE170) (**Exhibit 15**). On Tuesday morning, June 29, 2010, at approximately 9:31 a.m., the Court summarily denied the motion (DE172) (**Exhibit 16 – no actual written order**). Then, as the deadline for production drew even nearer, on Wednesday, June 30, 2010, at approximately 2:19 p.m., Epstein filed a motion for a right to redact tax returns that were being produced and informed the Court in his Motion that he was going to go ahead and only produce redacted tax returns (DE182). (**Exhibit 17**) Shortly thereafter, Epstein began transmitting redacted returns to Jane Doe’s counsel via email. Acting with

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impressive speed, at approximately 2:33 p.m., the Court summarily denied Epstein's motion (DE183). **(Exhibit 18 – No actual written Order)**

Following these actions by the Court, late on June 30, 2010, defendant Epstein made his production of unredacted tax returns electronically to Jane Doe's counsel. However, Epstein remarkably still failed to produce the correspondence he was required to produce in two critical ways. First, Epstein did not produce any information he had obtained from the state during discovery of the criminal investigation against him. Indeed, because he had not (apparently in his view) obtained any federal discovery during the criminal investigation, he turned over nothing at all responsive to Jane Doe's Requests No. 7 and No. 9. And similarly, with regard to correspondence from the prosecutors, Epstein also produced only correspondence with federal prosecutors – not with state prosecutors. Of course, this significantly limited the production he made, as Epstein pled guilty to *state* sex charges rather than federal sex charges – leaving Jane Doe with no correspondence or discovery from the State.

Second, with regard to his correspondence with federal prosecutors that he did produce, Epstein redacted anything coming from attorneys, leaving only the responses from the federal prosecutors. The result is an often unintelligible mishmash of back-and-forth emails, where only half of what is being said is disclosed. It forced Jane Doe to read everything out of context and severely limits the utility of what was produced.

On July 1, 2010, Jane Doe filed a motion seeking to have Epstein held in contempt and sanctioned for not properly producing discovery materials. (DE-190 ). **(Exhibit 19).** On July 6, 2010, Epstein settled his case against Jane Doe. At that time,

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Jane Doe had correspondence primarily between Epstein attorney Jay Lefkowitz and federal prosecutors. She had no correspondence between Epstein attorney Lilly Ann Sanchez and federal or state prosecutors; she likewise had no correspondence between Epstein attorney Ken Starr and federal or state prosecutors.

Only recently was Bradley Edwards, Esq., informed that there exists e-mail correspondence between Matthew Menchel at the United States Attorney's Office and Lilly Ann Sanchez, an Epstein attorney. Additionally, he was told that there exists a significant amount of correspondence between the United States Attorney's Office and Ken Starr, another Epstein attorney. ***Declaration of Bradley J. Edwards, Esq., at 21-22.*** **(Exhibit 20)** Edwards immediately sent a letter to Chris Knight, counsel for Epstein, inquiring about the existence of such correspondence that was not produced. **(Exhibit 21).** Joseph Ackerman, another attorney for Jeffrey Epstein, did speak with Mr. Edwards about this correspondence and expressed that he did not feel an obligation or responsibility to attempt to confirm or deny the existence of the correspondence in question nor to produce any additional correspondence.

#### **LEGAL MEMORANDUM**

It is obvious from the procedural history recounted above that Epstein has gone to great lengths to avoid producing correspondence with prosecutors about his liability for committing sex offenses. There also now exists a strong reason for believing that Epstein violated Judge Marra's discovery orders in a case similar to this one by deliberately withholding evidence. It is a matter of public discussion, for example, that Epstein hired attorney Ken Starr to help defend him against criminal sex offense

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charges. See Wikipedia Entry for Jeffrey Epstein, "Solicitation of Prostitution" (visited Oct. 30, 2010). And yet Epstein did not produce any correspondence between Mr. Starr and federal prosecutors. M.J.'s undersigned counsel has been informed that such correspondence exists. Accordingly, Epstein should have produced it on June 30, 2010 – but did not do so.

When there is a good faith belief that evidence may be lost or destroyed, the Court has authority to order the preservation of such evidence. See *AT&T Mobility L.L.C. v. Dynamic Cellular Corp.*, 2008 WL 2139518 (S.D. Fla. May 7, 2008); *Tracfone Wireless, Inc v. King Trading, Inc.*, 2008 WL 918243, at #1 (N.D. Tex. Mar. 13, 2008) (finding "a legitimate concern for the continuing existence and maintenance of the integrity of the evidence in question absent an order preserving the evidence."). The correspondence may be highly relevant M.J.'s claims, as it may indeed prove Epstein's awareness of his guilt of sex offenses, as well as liability to many other girls beside M.J. – evidence that will be admissible in this case under Fed. R. of Evid. 415 as well as to prove punitive damages. There should be no significant burden on Epstein, as the material in question is legal correspondence, presumably maintained in a standard file by a large and well-resourced law firm. Epstein is also a billionaire, who can hardly be heard to complain about the financial burden that such an order might impose on him. Accordingly, the evidence should be ordered preserved.

#### **CONFERENCE WITH COUNSEL**

M.J.'s counsel has conferred with counsel for Epstein and was unable to reach an agreement as to this motion and understands Epstein to object to this motion.

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## CONCLUSION

The Court should order Epstein to preserve all evidence regarding (1) e-mail correspondence between Matthew Menchel at the United States Attorney's Office and Lilly Ann Sanchez, an Epstein attorney, regarding Epstein's plea negotiation over federal and state sex offenses, and (2) correspondence between the United States Attorney's Office and Ken Starr, another Epstein attorney, regarding federal and state sex offenses committed by Epstein and the prosecution or non-prosecution of such offenses.

DATED: November 11, 2010

Respectfully Submitted,

s/ Bradley J. Edwards  
Bradley J. Edwards  
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## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on November 11, 2010 I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all parties on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those parties who are not authorized to receive electronically filed Notices of Electronic Filing.

s/ Bradley J. Edwards  
Bradley J. Edwards

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**SERVICE LIST**

**M.J. v. Jeffrey Epstein**  
**United States District Court, Southern District of Florida**

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