

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 08-CV-80381-MARRA-JOHNSON

JANE DOE NO. 5

Plaintiff,

v.

JEFFREY EPSTEIN,

Defendant.

_____ /

**DEFENDANT EPSTEIN'S ANSWER & AFFIRMATIVE
DEFENSES TO PLAINTIFF'S SECOND AMENDED COMPLAINT**

Defendant, JEFFREY EPSTEIN, (hereinafter "EPSTEIN"), by and through his undersigned attorneys, files his Answer to the Second Amended Complaint and states:

1. Without knowledge and deny.
2. As to the allegations in paragraphs 2, Defendant asserts his Fifth Amendment privilege against self-incrimination. See DeLisi v. Bankers Ins. Company, 436 So.2d 1099 (Fla. 4th DCA 1983); Malloy v. Hogan, 84 S.Ct. 1489, 1495 (1964)(the Fifth Amendment's Self-Incrimination Clause applies to the states through the Due Process Clause of the Fourteenth Amendment - "[i]t would be incongruous to have different standards determine the validity of a claim of privilege based on the same feared prosecution, depending on whether the claim was asserted in state or federal court."); 5 Fed.Prac. & Proc. Civ. 3d §1280 *Effect of Failure to Deny – Privilege Against Self-Incrimination* ("...court must treat the defendant's claim of privilege as equivalent to a specific denial."). See also 24 Fla.Jur.2d Evidence §592. *Defendants in civil actions.* – "... a civil defendant who raises an affirmative defense is not precluded from asserting

Jane Doe No. 5 v. Epstein
Page 2

the privilege [against self-incrimination], because affirmative defenses do not constitute the kind of voluntary application for affirmative relief" which would prevent a plaintiff bringing a claim seeking affirmative relief from asserting the privilege.

3. As to the allegations in paragraph 3, deny.

4. As to the allegations in paragraph 4, deny.

5. As to the allegations in paragraph 5, without knowledge and deny.

6. As to the allegations in paragraphs 6, Defendant asserts his Fifth Amendment privilege against self-incrimination. See DeLisi v. Bankers Ins. Company, 436 So.2d 1099 (Fla. 4th DCA 1983); Malloy v. Hogan, 84 S.Ct. 1489, 1495 (1964)(the Fifth Amendment's Self-Incrimination Clause applies to the states through the Due Process Clause of the Fourteenth Amendment - "[i]t would be incongruous to have different standards determine the validity of a claim of privilege based on the same feared prosecution, depending on whether the claim was asserted in state or federal court."); 5 Fed.Prac. & Proc. Civ. 3d §1280 *Effect of Failure to Deny – Privilege Against Self-Incrimination* ("...court must treat the defendant's claim of privilege as equivalent to a specific denial."). See also 24 Fla.Jur.2d Evidence §592. *Defendants in civil actions.* – "... a civil defendant who raises an affirmative defense is not precluded from asserting the privilege [against self-incrimination], because affirmative defenses do not constitute the kind of voluntary application for affirmative relief" which would prevent a plaintiff bringing a claim seeking affirmative relief from asserting the privilege.

7. As to the allegations in paragraphs 7 through 14 of Plaintiff's Second Amended Complaint, Defendant exercises his Fifth Amendment Privilege against self-

Jane Doe No. 5 v. Epstein
Page 3

incrimination. See DeLisi v. Bankers Ins. Company, 436 So.2d 1099 (Fla. 4th DCA 1983); Malloy v. Hogan, 84 S.Ct. 1489, 1495 (1964)(the Fifth Amendment's Self-Incrimination Clause applies to the states through the Due Process Clause of the Fourteenth Amendment - "[i]t would be incongruous to have different standards determine the validity of a claim of privilege based on the same feared prosecution, depending on whether the claim was asserted in state or federal court."); 5 Fed.Prac. & Proc. Civ. 3d §1280 *Effect of Failure to Deny – Privilege Against Self-Incrimination* ("...court must treat the defendant's claim of privilege as equivalent to a specific denial."). See also 24 Fla.Jur.2d Evidence §592. *Defendants in civil actions.* – "... a civil defendant who raises an affirmative defense is not precluded from asserting the privilege [against self-incrimination], because affirmative defenses do not constitute the kind of voluntary application for affirmative relief" which would prevent a plaintiff bringing a claim seeking affirmative relief from asserting the privilege.

8. In response to the allegations of paragraph 15, Defendant realleges and adopts his responses to paragraphs 1 through 14 of the Second Amended Complaint set forth in paragraphs 1 through 6 above herein.

9. Defendant asserts the Fifth Amendment Privilege against self-incrimination to the allegations set forth in paragraphs 16 through 21 of the Second Amended Complaint. See DeLisi v. Bankers Ins. Company, 436 So.2d 1099 (Fla. 4th DCA 1983); Malloy v. Hogan, 84 S.Ct. 1489, 1495 (1964)(the Fifth Amendment's Self-Incrimination Clause applies to the states through the Due Process Clause of the Fourteenth Amendment - "[i]t would be incongruous to have different standards determine the

Jane Doe No. 5 v. Epstein
Page 4

validity of a claim of privilege based on the same feared prosecution, depending on whether the claim was asserted in state or federal court.”); 5 Fed.Prac. & Proc. Civ. 3d §1280 *Effect of Failure to Deny – Privilege Against Self-Incrimination* (“...court must treat the defendant's claim of privilege as equivalent to a specific denial.”). See also 24 Fla.Jur.2d Evidence §592. *Defendants in civil actions.* – “... a civil defendant who raises an affirmative defense is not precluded from asserting the privilege [against self-incrimination], because affirmative defenses do not constitute the kind of voluntary application for affirmative relief” which would prevent a plaintiff bringing a claim seeking affirmative relief from asserting the privilege.

10. In response to the allegations of paragraph 22, Defendant realleges and adopts his responses to paragraphs 1 through 14 of the Second Amended Complaint set forth in paragraphs 1 through 6 above herein.

11. Defendant asserts the Fifth Amendment Privilege against self-incrimination to the allegations set forth in paragraphs 23 through 27 of the Second Amended Complaint. See DeLisi v. Bankers Ins. Company, 436 So.2d 1099 (Fla. 4th DCA 1983); Malloy v. Hogan, 84 S.Ct. 1489, 1495 (1964)(the Fifth Amendment's Self-Incrimination Clause applies to the states through the Due Process Clause of the Fourteenth Amendment - “[i]t would be incongruous to have different standards determine the validity of a claim of privilege based on the same feared prosecution, depending on whether the claim was asserted in state or federal court.”); 5 Fed.Prac. & Proc. Civ. 3d §1280 *Effect of Failure to Deny – Privilege Against Self-Incrimination* (“...court must treat the defendant's claim of privilege as equivalent to a specific denial.”). See also 24

Jane Doe No. 5 v. Epstein
Page 5

Fla.Jur.2d Evidence §592. Defendants in civil actions. – "... a civil defendant who raises an affirmative defense is not precluded from asserting the privilege [against self-incrimination], because affirmative defenses do not constitute the kind of voluntary application for affirmative relief" which would prevent a plaintiff bringing a claim seeking affirmative relief from asserting the privilege.

12. In response to the allegations of paragraph 28, Defendant realleges and adopts his responses to paragraphs 1 through 14 of the Second Amended Complaint set forth in paragraphs 1 through 6 above herein.

13. Defendant asserts the Fifth Amendment Privilege against self-incrimination to the allegations set forth in paragraphs 29 through 34 of the Second Amended Complaint. See DeLisi v. Bankers Ins. Company, 436 So.2d 1099 (Fla. 4th DCA 1983); Malloy v. Hogan, 84 S.Ct. 1489, 1495 (1964)(the Fifth Amendment's Self-Incrimination Clause applies to the states through the Due Process Clause of the Fourteenth Amendment - "[i]t would be incongruous to have different standards determine the validity of a claim of privilege based on the same feared prosecution, depending on whether the claim was asserted in state or federal court."); 5 Fed.Prac. & Proc. Civ. 3d §1280 *Effect of Failure to Deny – Privilege Against Self-Incrimination* ("...court must treat the defendant's claim of privilege as equivalent to a specific denial."). See also 24 Fla.Jur.2d Evidence §592. Defendants in civil actions. – "... a civil defendant who raises an affirmative defense is not precluded from asserting the privilege [against self-incrimination], because affirmative defenses do not constitute the kind of voluntary

Jane Doe No. 5 v. Epstein
Page 6

application for affirmative relief" which would prevent a plaintiff bringing a claim seeking affirmative relief from asserting the privilege.

WHEREFORE, Defendant requests that this Court deny the relief sought by Plaintiff.

Affirmative Defenses

1. As to all counts, Plaintiff consented to and was a willing participant in the acts alleged.
2. As to all counts alleged, Plaintiff consented to and participated in conduct similar and/or identical to the acts alleged with other persons which were the sole or contributing cause of Plaintiff's alleged damages
3. As to all counts, Defendant reasonably believed that the Plaintiff had attained the age of 18 years old at the time of the alleged acts.
4. Plaintiff's claims are barred by the applicable statute of limitations.

WHEREFORE Defendant requests that this Court deny the relief sought by Plaintiff.



Robert D. Critton, Jr.
Attorney for Defendant Epstein

Certificate of Service

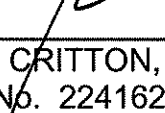
I HEREBY CERTIFY that a true copy of the foregoing was electronically filed with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record identified on the following Service List in the manner specified by CM/ECF on this 2nd day of April, 2009:

Jane Doe No. 5 v. Epstein
Page 7

Stuart S. Mermelstein, Esq.
Adam D. Horowitz, Esq.
Mermelstein & Horowitz, P.A.
18205 Biscayne Boulevard
Suite 2218
Miami, FL 33160
305-931-2200
Fax: 305-931-0877
ssm@sexabuseattorney.com
ahorowitz@sexabuseattorney.com
Counsel for Plaintiff Jane Doe #5

Jack Alan Goldberger
Atterbury Goldberger & Weiss, P.A.
250 Australian Avenue South
Suite 1400
West Palm Beach, FL 33401-5012
561-659-8300
Fax: 561-835-8691
jagesq@bellsouth.net
Co-Counsel for Defendant Jeffrey Epstein

Respectfully submitted,

By: 
ROBERT D. CRITTON, JR., ESQ.
Florida Bar No. 224162
rcrit@bclclaw.com
MICHAEL J. PIKE, ESQ.
Florida Bar #617296
mpike@bclclaw.com
BURMAN, CRITTON, LUTTIER & COLEMAN
515 N. Flagler Drive, Suite 400
West Palm Beach, FL 33401
561/842-2820 Phone
561/515-3148 Fax
(Co-Counsel for Defendant Jeffrey Epstein)