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August 1, 2019

By Electronic Mail

[REDACTED]

Assistant United States Attorneys  
U.S. Attorney's Office for the  
Southern District of New York  
[REDACTED]

New York, New York 10007

Re: United States v. Jeffrey Epstein, No. 19-cr-00490  
Defendant's Request for Particulars, Discovery and Brady Material

Dear [REDACTED]:

We are writing on behalf of Jeffrey Epstein regarding discovery in this case. In order to preserve Mr. Epstein's rights, and to request additional information, we respectfully submit this formal request for discovery in this case pursuant to the Fourth, Fifth and Sixth Amendments to the United States Constitution, Rules 12, 16, and 26.2 of the Federal Rules of Criminal Procedure, and the additional authority set forth below.

This request encompasses not only documents and information in your possession, custody, or control, but also documents that the government has the legal right or practical ability to obtain. Such information includes but is not limited to information in the possession, custody, or control of any agency of the United States involved in any way in regulating or investigating the activities alleged in the Indictment or related transactions, including but not limited to the Department of Justice (including but not limited to the Federal Bureau of Investigation ("FBI") and all United States Attorney's Offices), the Securities and Exchange Commission ("SEC"), and the Department of Homeland Security. In addition, such information includes information in

the possession, custody, and control of any local, state, or foreign law enforcement entities involved in any way in regulating or investigating the activities alleged in the Indictment or related transactions.<sup>1</sup> Finally, such information includes information gathered and/or produced from private entities aiding in the government's investigation.<sup>2</sup>

The defendant, through counsel, requests that the government comply with all of its discovery obligations under federal law, including but not limited to the following:<sup>3</sup>

**I. Statements of the Defendant**

- A. Pursuant to Rule 16(a)(1)(B)(i) of the Federal Rules of Criminal Procedure, Mr. Epstein requests any written or recorded statements made by Mr. Epstein, the existence of which is known, or by the exercise of due diligence may become known, to the government. This request includes, without limitation:
  1. All interview memoranda summarizing any interview of Mr. Epstein by the government, including all drafts of such interview memoranda;
  2. All transcripts and/or recordings of conversations in which Mr. Epstein participated;
  3. All wire and oral communications made by Mr. Epstein that were transmitted to or intercepted by, for or on behalf of any government agent or employee or any agency or entity of the government;
  4. All written or recorded statements of witnesses that reflect, relate, or incorporate any statements made by Mr. Epstein; and
  5. All other documents that purport to reflect, relate, or incorporate any statements made by Mr. Epstein.

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<sup>1</sup> Such entities include but are not limited to the New York Police Department, Manhattan District Attorney's Office, State Attorney's Office for the 15th Judicial District in and for Palm Beach County, the Palm Beach County Sheriff's Office, and New Mexico Attorney General's Office, which recently confirmed that it would be sharing evidence with "New York prosecutors." See Patrick Hayes & Chris Ramirez, *Balderas Believes Previous Investigations Failed Epstein's Alleged NM Victims* (July 16, 2019), <https://www.kob.com/new-mexico-news/balderas-believes-previous-investigations-failed-epsteins-alleged-nm-victims/5425345/>.

<sup>2</sup> See Curt Devine, *Private Investigator Has Spent A Decade on Jeffrey Epstein's Trail*, CNN.com (July 20, 2019), <https://www.cnn.com/2019/07/19/us/private-investigator-fistens-epstein-scx-case-invs/index.html>.

<sup>3</sup> All of these requests are continuing in nature, requiring supplementation in accordance with, *inter alia*, Rule 16(c) of the Federal Rules of Criminal Procedure.

6. The portion of any written record containing the substance of any oral statement made by Mr. Epstein, whether before or after arrest, in response to interrogation by any person then known to Mr. Epstein to be a government agent. *See Fed. R. Crim. P. 16(a)(1)(B)(ii).* This request includes, without limitation, all documents, including notes, prepared by any FBI employee or agent that contain the substance of any relevant statement made by Mr. Epstein.
7. The substance of any other oral statement made by Mr. Epstein, whether before or after arrest, in response to interrogation by any person then known by Mr. Epstein to be a government agent, if the prosecution intends to use that statement at trial. *See Fed. R. Crim. P. 16(a)(1)(A).*

## II. Documents and Tangible Objects

- A. Pursuant to Rule 16(a)(1)(E) of the Federal Rules of Criminal Procedure, Mr. Epstein requests all documents, tangible objects, or copies or portions thereof:
  1. Obtained from or belonging to Mr. Epstein, or that belonged to Mr. Epstein at the time of the alleged offenses, or that belong or belonged to any agent or employee of Mr. Epstein or any entity allegedly associated with Mr. Epstein. *See Fed. R. Crim. P. 16(a)(1)(E)(iii).*
  2. The government intends to use at trial in its case-in-chief. *See Fed. R. Crim. P. 16(a)(1)(E)(ii).* Mr. Epstein requests that any materials in this category be specifically identified from among the materials produced pursuant to Mr. Epstein's other Rule 16 and *Brady* requests, both to enable counsel to prepare effectively for trial and to afford Mr. Epstein opportunity to move to suppress any evidence the prosecution intends to use in its case-in-chief. *See Fed. R. Crim. P. 12(b)(3) and 12(d)(2).*
  3. Material to the preparation of Mr. Epstein's defense, *see Fed. R. Crim. P. 16(a)(1)(E)(i),* including but not limited to those items set forth in paragraphs II.A.4 to II.A.27 below.
  4. That are alleged as the basis for Counts 1 and 2's assertion that the alleged crimes were committed "in or affecting interstate commerce."
  5. Relating to Mr. Epstein or the conduct alleged in the Indictment that were introduced as exhibits before the grand jury. Mr. Epstein requests that any materials in this category be specifically identified from among the materials produced pursuant to Mr. Epstein's other Rule 16 and *Brady* requests.

6. Relating to Mr. Epstein or the conduct alleged in the Indictment that were obtained by or for the grand jury or pursuant to any grand jury, pretrial, or trial subpoena.
7. Relating to Mr. Epstein or the conduct alleged in the Indictment obtained from any witness who testified before the grand jury, or their counsel, or who was interviewed or consulted during the course of the grand jury investigation.
8. Relating to Mr. Epstein or the conduct alleged in the Indictment that were obtained by any search or seizure pursuant to a search warrant or otherwise.
9. Relating to Mr. Epstein or the conduct alleged in the Indictment obtained from any federal, state, or local governmental, regulatory, or legislative body or agency.
10. Relating to press releases or press conferences concerning Mr. Epstein or the investigation of him or others named in the Indictment, and all other documents relating to any contacts between the government and representatives of the media concerning Mr. Epstein or others named in the Indictment, or the investigation of Mr. Epstein or others named in the Indictment.
11. Relating to the reputation of Mr. Epstein including without limitation, any documents relating, positively or negatively, to Mr. Epstein's reputation for honesty, integrity, or competence.
12. Relating to any investigations, interviews, reports, analyses, or other documents provided by, or to, the U.S. Attorney's Office for the Southern District of New York, the Department of Justice, the FBI, or any state or local government or regulatory body or agency, in connection with the investigation and prosecution of Mr. Epstein.
13. Referenced, directly or indirectly, in the Indictment.
14. Relating to communications between Mr. Epstein and any alleged co-conspirator, indicted or unindicted, concerning any of the matters alleged in the Indictment.
15. Relating to, or concerning or referring to, communications between Mr. Epstein and any other person not named in the Indictment concerning any of the matters alleged in the Indictment.

16. Relating to the “payments” alleged in the Indictment, including but not limited to any financial records reflecting such payments.
17. Relating to the finances of Mr. Epstein or entities owned or controlled by Mr. Epstein.
18. Relating to the alleged victims, “dozens of minor girls,” and/or “recruiters” in the Indictment.
19. Obtained from or belonging to agents of Mr. Epstein or entities owned and/or controlled by Mr. Epstein, including documents obtained from his employees.
20. Relating to the scheduling of any massages for or by Mr. Epstein.
21. Relating to Mr. Epstein’s travel or whereabouts during the period alleged in the Indictment.
22. Relating to the use of Mr. Epstein’s planes.
23. Relating to access to Mr. Epstein’s homes or businesses, including visitor logs and security camera footage.
24. Relating to any civil or criminal proceedings concerning the alleged victims, including but not limited to pleadings, motions, and discovery materials.
25. Relating to the negotiation and execution of the: (1) non-prosecution agreement between the Department of Justice and Mr. Epstein in the matter captioned *In re Investigation of Jeffrey Epstein*, dated September 24, 2007 (and any addenda related thereto) (the “NPA”); (2) plea agreement between the State Attorney’s Office for the 15<sup>th</sup> Judicial District in and for Palm Beach County and Mr. Epstein, dated that resulted in his plea of guilty on June 30, 2008 (the “Guilty Plea”).
26. Relating to communications with any lawyer for the alleged victims and the Department of Justice, including but not limited to communications with the United States Attorney’s Offices for the Northern District of Georgia, Southern District of Florida, and the Southern District of New York.

27. Relating to any investigation undertaken by the Department of Justice, the United States Congress<sup>4</sup>, Palm Beach County Sheriff's Office, or any other governmental entity into matters related to the NPA, Guilty Plea, or Mr. Epstein's incarceration in Palm Beach County.
28. Relating to the "53-page indictment prepared by the FBI" in 2006-2007 and any documents related thereto.<sup>5</sup>
29. Relating to the redacted footnote in each of the Affidavits in support of the Search Warrants for the E71st residence that were provided in the first discovery production

### **III. Particulars**

- A. The general nature of certain portions of the Indictment does "not advise [Mr. Epstein] of the specific acts of which he is accused." *United States v. Torres*, 901 F.2d 205, 234 (2d Cir. 1990). *See also United States v. Rigas*, 490 F.3d 208, 237 (2d Cir. 2007); *United States v. Davidoff*, 845 F.2d 1151, 1154 (2d Cir. 1988); *United States v. Bortnovsky*, 820 F.2d 572, 574 (2d Cir. 1987). Accordingly, pursuant to the Sixth Amendment to the U.S. Constitution and Rule 7(f) of the Federal Rules of Criminal Procedure, Mr. Epstein requests that the government provide the following information relating to the allegations in the Indictment:
  1. Specifically identify the "dozens of minor girls" and "multiple minor victims" referenced in the Indictment. *See, e.g.*, Indictment ¶¶ 1, 6, 22.
  2. Specifically identify the "other locations" and "multiple states" referenced in ¶ 1 and ¶ 4 of the Indictment, respectively.
  3. Specifically identify each of the individuals referenced in the Indictment, including but not limited to "Employee-1," "Employee-2," "Employee-3," and "other employees." *See* Indictment ¶ 18.
  4. Specifically identify the "others" alleged in the Indictment to have conspired with Mr. Epstein.

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<sup>4</sup> See Nicholas Fandos, *Democrats Demand Briefing and Documents on Epstein Plea Deal*, N.Y. Times (July 11, 2019), <https://www.nytimes.com/2019/07/11/us/politics/democrats-acosta.html>.

<sup>5</sup> See *id.*

5. Specifically identify the “various ways” in which victims were “particularly vulnerable to exploitation” referenced in ¶ 3 of the Indictment.
6. Specifically identify the “instances” in which “minor victims expressly told [Mr. Epstein] their age” referenced in ¶ 4 of the Indictment.
7. Specifically identify the instances in which Mr. Epstein “escalat[ed] the nature and scope of physical conduct,” including but not limited to identifying whether any of those instances amounted to physical force, referenced in ¶¶ 9 and 15 of the Indictment.
8. Specifically identify the property referenced in ¶ 25 of the Indictment.
9. Specifically identify the “other” overt acts (“the following overt acts, among others”) referenced in ¶ 22 of the Indictment.

#### **IV. *Brady* Material**

- A. Pursuant to *Brady v. Maryland*, 373 U.S. 83 (1963) and its progeny, including *Giglio v. United States*, 405 U.S. 150 (1972), *United States v. Agurs*, 427 U.S. 97 (1976), *United States v. Bagley*, 473 U.S. 667 (1985), and *Kyles v. Whitney*, 514 U.S. 419 (1995), and Judge Berman’s Individual Practices, Mr. Epstein requests immediate identification and disclosure of all materials that are exculpatory, would tend to negate the guilt of Mr. Epstein or mitigate the offenses, would tend to impeach any potential witnesses, or are relevant to issues of punishment or sentencing, which are in the government’s possession, custody, or control, or otherwise known to the government, including but not limited to:
  1. Any documents or information indicating or tending to establish that any of the allegations in the Indictment are not true;
  2. Any documents or information indicating or tending to establish that the conduct that is the subject of the Indictment did not violate government laws or regulations;
  3. Any documents or information indicating or tending to establish that Mr. Epstein did not instigate, control, authorize, approve, or acquiesce in any conduct that is the subject of the Indictment;
  4. Any documents or information indicating or tending to establish that:

- a. Mr. Epstein engaged in any conduct that forms the basis of the Indictment with the good faith belief that his conduct did not constitute a crime;
- b. Mr. Epstein did not believe the alleged victims were under the age of eighteen;
- c. Mr. Epstein took steps to prevent minors from entering his residences;
- d. The alleged sex acts were not the result of force, restraint, coercion, fraud, or undue influence;
- e. The alleged "recruiters" or any alleged co-conspirators or accomplices were over the age of eighteen;
- f. Alleged co-conspirators, witnesses, or their counsel have represented to the government that no wrongdoing occurred in connection with the conduct alleged in the Indictment;
- g. The alleged victims deceived Mr. Epstein in any way including but not limited as to their age, family, associates, or history;
- h. The alleged victims received money (or other things of value) from Mr. Epstein, whether as gifts or in exchange for things other than sex acts;
- i. The alleged victims received money (or other things of value) after refusing to perform sex acts.

5. Any documents or information indicating or tending to establish that:
  - a. Some or all of the conduct in the Indictment is subject to the NPA; and
  - b. Some or all of the conduct was known to the government prior to June 30, 2008.
  - c. The identity of "Victims 1,2, and/or 3" were known to the Government before June 30, 2008
  - d. The instant prosecution was initiated as a result of undue political pressure.

6. Any documents or information that may serve to impeach any government witness, including but not limited to:
  - a. Any documents or information that show any conviction or arrest of any government witness;
  - b. Any documents or information relating to promises made or any consideration or inducements made to any prospective government witness, whether directly to the witness or indirectly to the witness's attorney, friends, family, or business associates. "Consideration" means anything of value or use, including immunity grants, whether formal or informal, witness fees, transportation assistance, money, or assurance of favorable treatment with respect to any criminal, civil, or administrative matter;
  - c. Any documents or information relating to material inconsistencies between statements given or transmitted by any person to the government or to any private person or entity, and any statements or other information which would tend to impeach the credibility of any intended witness;
  - d. Any information bearing adversely on the character or reputation of any intended government witness, including any evidence of community reputation for lack of truthfulness;
  - e. Each specific instance of conduct from which it could be inferred that any intended government witness is untruthful;
  - f. Any documents or information tending to show the bias of a potential government witness, including animosity toward Mr. Epstein, animosity toward a group of which Mr. Epstein is a member or with which Mr. Epstein is affiliated, a relationship with an alleged victim, or known but uncharged criminal conduct that may provide an incentive to curry favor with a prosecutor;
  - g. Any documents or information affecting the reliability of a potential government witness's testimony, including known alcohol or substance abuse, mental health issues, or other issues that could affect the witness's ability to perceive and recall events;
  - h. Any documents or information relating to a witness or potential witness's interest in bringing a civil lawsuit against Mr. Epstein or

seeking restitution or any other form of monetary benefit as a potential result of his conviction.

- B. The date of and participants in each and every interview (including not only interviews conducted by the U.S. Attorney's Office for the Southern District of New York, but also interviews conducted by other law enforcement entities and any third parties), debriefing, "queen for a day" session, proffer, deposition, or other statement or description of the alleged facts made by each potential government witness (whether directly or indirectly, such as a proffer made by counsel). In addition, please specify, as to each such witness, the first date on which the witness made any allegation that Mr. Epstein engaged in any allegedly unlawful conduct or any conduct alleged in the Indictment.
- C. As you are aware, New York has adopted Rule of Professional Conduct 3.8, entitled "Special Responsibilities of Prosecutors and Other Government Lawyers," which provides that a prosecutor shall "make timely disclosure to counsel for the defendant . . . of the existence of evidence or information known to the prosecutor or other government lawyer that tends to negate the guilt of the accused, mitigate the degree of the offense, or reduce the sentence. . . ." Rule 3.8(d). The Supreme Court has recognized that Rule 3.8 imposes a higher standard on prosecutors than the standards mandating disclosure of exculpatory evidence under *Brady v. Maryland*, 373 U.S. 83 (1963). See *Kyles v. Whitley*, 514 U.S. 419, 437 (1995) ("[Brady] requires less of the prosecution than the ABA Standards for Criminal Justice, which call generally for prosecutorial disclosures of any evidence tending to exculpate or mitigate"); ABA Standards for Criminal Justice, Prosecution Function and Defense Function 3-3.11(a) (3d ed. 1993) ("A prosecutor should not intentionally fail to make timely disclosure to the defense, at the earliest feasible opportunity, of the existence of all evidence or information which tends to negate the guilt of the accused or mitigate the offense charged or which would tend to reduce the punishment of the accused"); ABA Model Rule of Professional Conduct 3.8(d) (1984) ("The prosecutor in a criminal case shall . . . make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense").

Mr. Epstein contends that the foregoing categories of information constitute *Brady* and Rule 3.8(d) material, and that disclosure should take place immediately. Mr. Epstein further requests that the government identify with particularity and provide copies of all materials that qualify as *Brady* and Rule 3.8 material, as described above. Please advise us promptly whether the government will be producing *Brady* material immediately even if it is contained in what might otherwise be considered as *Jencks* material, or whether you take the position that you are not obligated to produce such material at this time.

- D. Mr. Epstein also requests the underlying source material for any *Brady* and Rule 3.8(d) information, as opposed to any summary letter or paraphrased description of the information. Please advise us promptly whether the government will be producing underlying source material.
- E. For purposes of the *Brady* doctrine, “the format of the information does not determine whether it is discoverable.” Department Memorandum for Department Prosecutors Providing Guidance for Prosecutors Regarding Criminal Discovery, at 6 (Jan. 4, 2010). For example, material exculpatory information that is provided “during a conversation with an agent or a witness is no less discoverable than if that same information were contained in an email.” *Id.* Similarly, the Second Circuit has recognized that attorney proffers are equally subject to *Brady* obligations as witness proffers. *States v. Triumph Capital Group, Inc.*, 544 F.3d 149, 157, 165 (2d Cir. 2008) (recognizing that “[a]n attorney proffer apprises the government of what the client would be able to provide by way of testimony” and finding a *Brady* violation where the government failed to turn over notes from an attorney proffer). Mr. Epstein therefore expects that all such information will be memorialized and produced to Mr. Epstein.
- F. Finally, Mr. Epstein notes Rule 4.C.3 of Judge Berman’s Individual Practices, which, *inter alia*, (1) requires disclosure of *Brady* materials within two weeks of its discovery; (2) re-affirms that the government’s obligation applies “regardless of whether the Government ‘credits’ the *Brady* Material”; and (3) re-affirms that the government’s obligations extend to “law enforcement and regulatory agencies that are or have been involved in the prosecution of the defendant or in parallel proceedings or investigations involving the defendant.”

#### **V. Jencks Material**

Pursuant to the Jencks Act, 18 U.S.C. § 3500, and Rule 26.2 of the Federal Rules of Criminal Procedure, Mr. Epstein requests that the government provide a list of the names and addresses of all witnesses (and their counsel) that the government intends to call in its case-in-chief and all statements of those witnesses in the possession, custody, or control of the government or any other governmental entity, including but not limited to notes of interviews, FBI 302s, or other summaries prepared by government attorneys or agents, and grand jury transcripts and any other witness statements. Mr. Epstein requests that the government begin providing this material as soon as possible, or in any event no later than February 8, 2020 or, if there is a setting of the trial date after June 8, 2020, one hundred and twenty days before that trial date.

Criminal Records

Pursuant to Rule 16(a)(1)(D) of the Federal Rules of Criminal Procedure, Mr. Epstein requests copies of the prior criminal records, if any, of Mr. Epstein or any indicted or unindicted co-conspirators.

## **VI. Purportedly Privileged Material**

Mr. Epstein requests that you identify any person or entity that has asserted any attorney-client privilege, work-product privilege, common-interest privilege, or any other privilege as the basis for withholding or not producing, in whole or in part, any documents to the government or the grand jury during the investigation. Mr. Epstein further requests that you provide all documents (including all privilege logs) with respect to the assertion of or challenge to any such claimed privileges.

## **VII. Scientific Evidence**

- A. Pursuant to Rule 16(a)(1)(F) of the Federal Rules of Criminal Procedure, Mr. Epstein requests documentation relating to all requests for, and the results of, physical or mental examinations, scientific tests, or experiments that were conducted in connection with the investigation of the charges contained in the Indictment. This includes but is not limited to:
  1. All forensic examinations of any computer hard drive or handheld mobile device that Mr. Epstein possessed or to which Mr. Epstein had access;
  2. All handwriting exemplars, handwriting samples, handwriting or document analyses, and all documents examined or used in or related to such analyses;
  3. All fingerprint and palm print exemplars, fingerprint samples, comparisons, and opinions of fingerprint experts, and all documents examined or used in connection with, or that relate to, those opinions; and
  4. All polygraph examinations, psychological stress examinations, hypnotic procedures, or any other scientific procedures devised to determine whether a subject is telling the truth, or to refresh a witness's memory, and all documents that refer or relate to such examinations.

## **VIII. Rule 404(b) Evidence**

Pursuant to the Fifth and Sixth Amendments to the United States Constitution and Rules 403 and 404(b) of the Federal Rules of Evidence, Mr. Epstein requests that the government disclose all evidence of similar crimes, wrongs, or acts, allegedly committed by Mr. Epstein (or any person alleged to have been acting pursuant to his instructions), upon which the government

intends to rely to prove motive, scheme, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident, in its case-in-chief.

## **IX. Grand Jury**

Mr. Epstein requests that the government disclose the empanelment and adjournment dates of each grand jury that heard evidence concerning this case and the legal instructions provided to the grand jury before the Indictment was returned.

## **X. Rule 801(d)(2) Evidence**

Pursuant to the provisions of Rule 104 of the Federal Rules of Evidence, and the Defendant's right to a fair trial, Mr. Epstein requests that the government disclose whether it intends to offer, in its case-in-chief, any evidence covered by Rule 801(d)(2) of the Federal Rules of Evidence and that it provide the substance of any such statement. This request includes but is not limited to:

- A. Any statement as to which Mr. Epstein allegedly manifested his adoption or belief in its truth. *See Fed. R. Evid. 801(d)(2)(B).*
- B. Any statement made by another which was purportedly authorized by Mr. Epstein. *See Fed. R. Evid. 801(d)(2)(C).*
- C. Any statement made by an agent or employee of Mr. Epstein concerning a matter within the scope of his agency or employment made during the existence of such a relationship. *See Fed. R. Evid. 801(d)(2)(D).*
- D. Any statement made by an alleged co-conspirator of Mr. Epstein during the course and in furtherance of any alleged conspiracy. *See Fed. R. Evid. 801(d)(2)(E).*

## **XI. Rule 1006 Evidence**

Pursuant to Rule 1006 of the Federal Rules of Evidence, Mr. Epstein requests that he be advised whether the government will seek to offer any chart, summary, or calculation in evidence, and requests that all writings, recordings, or other information on which such charts, summaries, or calculations are based be made available sufficiently in advance of trial for inspection and copying.

## **XII. Suppression Issues**

- A. As a predicate to potential motions pursuant to Fed. R. Crim. P. 12, Mr. Epstein requests that he be informed:

1. Whether the government intends to offer into evidence any statement made by Mr. Epstein or any family member, and the substance of any such statement;
2. Whether any evidence in the government's possession, custody, or control was obtained by a search and seizure conducted by the government, and a description of such evidence;
3. Whether any evidence in the government's possession, custody, or control was obtained through electronic or mechanical surveillance, including without limitation wiretaps, body wires, pen registers, and/or surveillance of telephone calls, and a description of such evidence;
4. Whether any evidence in the government's possession, custody, or control was obtained through the use of a beeper or other tracking device, or subpoenas or warrants for GPS or cell tower information that would disclose Mr. Epstein's whereabouts at any particular time, and a description of such evidence;
5. In connection with any tape recording, wiretaps, or other surveillance of Mr. Epstein during the investigation of the allegations of the Indictment or any related allegations, Mr. Epstein seeks:
  - a. the names and addresses of all such persons whose personal or business telephones the government tapped or monitored, or whose conversations or actions the government monitored by other means without the person's knowledge;
  - b. transcripts or other records of the statements or conversations monitored;
  - c. the original recorded tapes created during such surveillance;
  - d. the procedures used to conduct such surveillance; and
  - e. the authority under which such surveillance was conducted.
6. Whether any evidence in the government's possession, custody, or control was obtained through a mail cover and/or trash cover and a description of such evidence; and
7. The identities of any informant or undercover agent employed by the government during its investigation of the charges of the Indictment.

B. Mr. Epstein requests that the government disclose whether it intends to introduce any evidence obtained in the manner described in Section XIII.A.1-6. If the government intends to do so, Mr. Epstein requests that the government: (1) identify such evidence; (2) identify the source of the evidence; and (3) disclose any warrant and supporting affidavits related to the collection of the evidence.

### **XIII. Seized Information that is Unresponsive or Subject to the Attorney-Client Privilege**

It is our understanding that the government has seized materials – including computers and other portable electronics – that are likely to contain documents and information that are: (1) outside the scope of the search warrant which purportedly authorized the search (“Unresponsive Data”) and/or (2) subject to the attorney-client privilege, the attorney work product doctrine, and other privileges (“Privileged Data”) (collectively, “Seized Data”).<sup>6</sup> As an initial matter, Mr. Epstein requests that the government produce these materials to defense counsel in their entirety. Mr. Epstein further requests that the government maintain and preserve audit logs that record what files were searched, when and by whom, and whether additional copies were made.

With respect to Unresponsive Data, Mr. Epstein requests that the Government: (1) employ search terms or other protocols to ensure that any review of irrelevant documents was limited and that irrelevant documents are promptly segregated; (2) disclose such protocols to the defense; and (3) return any non-seized documents (and the media from which they were collected) as soon as possible to Mr. Epstein. See Federal Rule of Criminal Procedure 41(g).

With respect to Privileged Data, Mr. Epstein further requests that the government establish sound procedures to ensure any Privileged Data is appropriately protected, including but not limited to use of a privilege (or “taint”) team to review the documents. We are pleased to provide the privilege team a list of counsel to Mr. Epstein to aid in this review.

\* \* \*

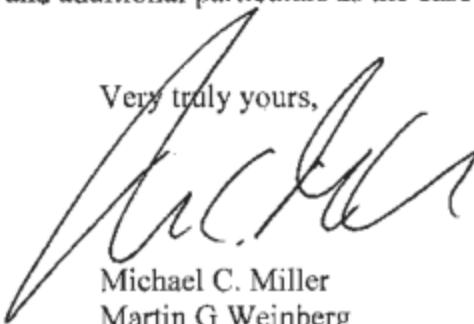
Please advise us whether the government will provide the requested information so that Mr. Epstein can determine whether it will be necessary to move for a bill of particulars or file other discovery-related motions. For any request for which there is a dispute, Mr. Epstein requests that you take all necessary steps to ensure the documents and information are preserved by their custodian.

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<sup>6</sup> Mr. Epstein reserves all rights to challenge the search and seizure of these materials.

We are available to discuss any of the foregoing requests with you when convenient. We reserve the right to request further discovery and additional particulars as the case progresses.

Very truly yours,



Michael C. Miller  
Martin G. Weinberg