

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
REVISED OMNIBUS MOTION IN LIMINE

Plaintiff/Counter-Defendant Jeffrey Epstein ("Epstein"), files his Revised Omnibus Motion in Limine and states:

INTRODUCTION

To prevail on his Counterclaim for malicious prosecution, Defendant/Counter-Plaintiff, Bradley J. Edwards ("Edwards"), must prove that Jeffrey Epstein filed a civil proceeding against him "without probable cause." *See Korman v. Kent*, 821 So. 2d 408, 410 (Fla. 4th DCA 2002). Edwards' burden is "onerous." *See Burns v. GCC Beverages, Inc.*, 502 So. 2d 1217, 1219 (Fla. 1986). In recent deposition testimony, Edwards admitted that he has no evidence of Epstein's intent and he intends to attempt to meet his burden by introducing Epstein's assertions of the Fifth Amendment in response to questions about the validity of Edwards' clients' claims against Epstein. Because Edwards' strategy reflects his fundamental misunderstanding of what this case

is about and the legal significance of Epstein's assertions of the Fifth Amendment, this Court must bar Edwards from introducing this testimony.

First, Edwards' plan to re-litigate the validity of his clients' tort claims against Epstein demonstrates that he does not understand what this case is about. This case is not, and has never been, about whether or not the claims filed in 2008 against Epstein by Edwards' clients are true. Rather, this lawsuit is about whether or not Epstein lacked probable cause to allege (not ultimately prove) that Edwards participated in or had a connection to Rothstein Rosenfeldt and Adler's ("RRA") Ponzi scheme after Edwards joined RRA. Epstein is not alleging, in this action, that Edwards did anything improper in regard to the conduct of the litigation until after Edwards joined RRA. Epstein's claims did not "put into issue [Epstein's] alleged responsibility for the claims brought against him" by Edwards' clients (Epstein's Motion to Amend Complaint, D.E. 195 ¶ 4), challenge Edwards' basis for filing those claims, or allege Edwards engaged in misconduct between the dates his clients first filed suit against Epstein and the date on which Edwards joined RRA. Importantly, Edwards' state of mind is not relevant! Only what Epstein knew and believed in December 2009 matters.

Rather, the crux of Epstein's allegations was that, after joining RRA, Edwards misused the existing cases, that he had previously pursued in a manner that was not unlawful, sought inflammatory discovery that was not relevant to Edwards' clients' allegations against Epstein, filed a meritless but attention-grabbing motion alleging fraudulent asset transfers by Epstein, and commenced (but did not serve) a duplicative lawsuit on behalf of one of his clients—all of which on its face seemed in furtherance of Rothstein's Ponzi scheme. The question to be tried, then, is whether, at the time he filed suit against Edwards, Epstein lacked probable cause—whether he lacked "a reasonable belief, based on facts and circumstances known to him, in the validity" of his

claims founded upon Edwards' apparent misconduct (and Rothstein's indisputable misconduct) while Edwards held himself out as a partner at Rothstein's firm. *See Wright v. Yurko*, 446 So. 2d 1162, 1166 (Fla. 5th DCA 1984) (citation omitted).¹ Therefore, evidence concerning the truth or falsity of Edwards' clients' tort claims, Edwards' state of mind and actual motivation for doing what he did after becoming a partner at RRA, and Epstein's assertions of the Fifth Amendment in response to questions about those claims are not relevant to this question and should be excluded.

Second, even if some of Epstein's assertions of the Fifth Amendment were relevant and this Court were to admit them into evidence, Edwards overstates the effect of this testimony. Edwards is not entitled to any presumption based on Epstein's testimony, and the Court should protect the jury from drawing any inference in Edwards' favor based solely on Epstein's assertion of the Fifth Amendment.

Third, introducing Epstein's repeated assertions of the Fifth Amendment—as Edwards apparently intends to do—is prejudicial and reversible error.

RELEVANT FACTUAL BACKGROUND²

Edwards' Clients' Actions Against Epstein

Before joining RRA, Edwards filed three lawsuits against Epstein. On August 13, 2008, Edwards sued Epstein in the Southern District of Florida on behalf of Jane Doe. On September 11, 2008, Edwards filed lawsuits against Epstein in the 15th Judicial Circuit on behalf of L.M. and E.W. None of Edwards' clients alleged they flew on Epstein's plane or met Epstein's wealthy, famous, and politically connected male acquaintances.

¹ Edwards must also prove the other elements of his malicious prosecution Counterclaim.

² Epstein is filing an Appendix in support of this Motion, which he will supplement with the documents cited herein.

Edwards joined RRA no later than April 9, 2009. At that point, the tenor of the litigation changed:

- On April 9, 2009, Jane Doe moved to lift a protective order, which was entered in Edwards' Crime Victim's Rights Act case against the United States and governed the disclosure of Epstein's non-prosecution agreement, and to allow her counsel to place certain of its terms in the public record. (S.D. Fla. Case No. 9:08-cv-80893-KAM D.E.32 at 3.)
- On April 17, 2009, Doe amended her complaint and filed an eighteen-page Civil RICO Case Statement. In the Case Statement, she made new and inflammatory allegations such as: "[i]t is common belief that the sexual acts against minors temporarily ceased in approximately November 2005 when Epstein learned that law enforcement authorities were investigating his crimes," but if "Epstein, through his criminal enterprise, is given the opportunity to commit similar acts in the future upon his release from jail, the enterprise will likely continue this illegal activity" and "[t]he criminal enterprise had a definite structure similar to a mafia-type family[.]" (S.D. Fla. Case No. 9:08-cv-80893-KAM D.E. 38-1 at 6, 8, 10.)
- On April 30, 2009, during a deposition in E.W.'s case, Edwards asked Epstein outrageous and irrelevant questions such as, "Mr. Epstein, did you ever care about any of the feelings of the minor girls that you were engaging in sex with?" and "Isn't it true that at the time you were inserting your fingers into the vagina of these little kids, all you cared about was your own sexual gratification?" (See 15th Jud. Cir. Case No. 50-2008-CA-028058-XXXX-MB D.E. 84.)
- On June 19, 2009, Doe moved for an injunction restraining Epstein's supposed fraudulent transfer of assets, the appointment of a receiver for Epstein's property, and an order

requiring Epstein to post a \$15 million bond. (S.D. Fla. Case No. 9:08-cv-80119-KAM D.E. 165.) Judge Marra subsequently denied the motion as meritless: “[n]o relief of this character has been thought justified in the long history of equity jurisprudence” and the “motion is entirely devoid of evidence of Defendant’s alleged fraudulent transfers.” (S.D. Fla. Case No. 9:08-cv-80119-KAM D.E. 400 at 2, 3.)

- On July 22, 2009, Edwards sent a letter to counsel representing other alleged Epstein victims. He said he intended to notice the depositions of Donald Trump and Bill Clinton (among others), even though none of his clients alleged she had any connection to either.
- On July 27, 2009, Edwards commenced a second action on behalf of L.M. in the Southern District of Florida. (S.D. Fla. Case No. 9:08-cv-81092-KAM D.E. 1.) L.M.’s complaint was 234 pages long and asserted 156 causes of action—all pursuant to 18 U.S.C. § 2255—each of which carried with it a minimum statutory damages award of \$150,000 (more than \$23 million in total). (*Id.*) The complaint alleged—for the first time and contrary to L.M.’s prior testimony—that Epstein had “forc[ed] [L.M.] into oral sex.” (*Id.* ¶ 12.) Edwards, the sole attorney listed on the complaint, has recently admitted he did not sign it himself and that he does not know who signed it. Whoever filed the complaint and commenced the action entered Epstein’s last name as “Espstein” in the court’s electronic filing system, and the complaint was never served.
- On August 11, 2009, Edwards noticed Donald Trump’s deposition for August 18, 2009. On August 24, 2009, Edwards re-noticed Donald Trump’s deposition for September 24, 2009. (S.D. Fla. Case 9:08-cv-80893-KAM.)
- On August 12, 2009, E.W. moved for permission to enter and inspect Epstein’s entire property. (15th Jud. Cir. Case No. 50-2008-CA-028058-XXXX-MB D.E. 143.)

- On August 24, 2009, L.M. noticed the depositions of Epstein's pilots Lawrence Paul Visoski, Jr., and David Hart Rogers. (15th Jud. Cir. Case No. 50-2008-CA-028051-XXXX-MB D.E. 159.) L.M. requested they produce "[a]ll original flight logs from January, 1998 through present for any and all aircraft/airplanes/jets which [they] piloted or co-piloted that were owned or controlled by Jeffrey Epstein or Ghislaine Maxwell." (*Id.*) Again, none of Edwards' clients alleged she flew on Epstein's plane or asserted claims for the periods 1998 through mid-2001 or late 2005 through 2009.

Pleadings & News Reports Detailing The Scope Of Rothstein's Ponzi Scheme And The Central Role Of Edwards' Cases

In November and December 2009, RRA imploded; criminal and civil pleadings and news reports revealed to the public the breathtaking scope of Rothstein's Ponzi scheme; and Rothstein's investors, in a complaint against Rothstein and in related news coverage, accused Rothstein and others of using RRA's cases against Epstein—*Edwards'* cases against Epstein—in furtherance of the Ponzi scheme. Specifically:

- On November 3, 2009, the *South Florida Sun-Sentinel* reported that "Rothstein attracted investors by promising huge returns and selling settlements he said he'd reached in sex discrimination and whistle-blower cases[.]" Sally Kestin, Jon Burstein & Brittany Wallman, *Scott Rothstein's investment deals seemed too good to be true*, S. Fla. Sun-Sentinel, Nov. 3, 2009.³ The article quoted Alan Sakowitz, who said, "I was convinced it was all a Ponzi scheme and I notified the FBI in detail how Scotty was hiding behind a legitimate law firm to peddle fake settlements[.]" *Id.* Sakowitz also told the *Sun-Sentinel*

³ Available at http://articles.sun-sentinel.com/2009-11-03/news/sfl-rothstein-investment-plan-11sbnov03_1_scott-rothstein-stuart-rosenfeldt-firm.

that “Rothstein boasted of having sophisticated eavesdropping equipment and that former cops would sift through potential defendants’ garbage.”

- On November 6, 2009, the *New Times Broward-Palm Beach* reported that, “[o]ne way” Rothstein enticed investors “was by tricking [them] into believing that his firm was representing numerous underaged girls who had sex with Palm Beach billionaire and convicted child sex offender Jeffrey Epstein.” Bob Norman, *Scott Rothstein: The Jeffrey Epstein and Bill Clinton Ploy*, *New Times Broward-Palm Beach*, Nov. 6, 2009.⁴ The article said that “Rothstein claimed that he had flight logs showing that Epstein flew extremely prominent people, including former President Bill Clinton, on his private jet with some of the plaintiffs” and that Rothstein “told investors that Epstein, Clinton, and other celebrities involved basically had no choice but to settle these cases and that it was a veritable treasure-trove.” *Id.* The *New Times* said that investors “then ponied up millions to invest in the settlements, pay out a portion of those settlements to the victims, and pocket the rest,” but Rothstein was “fabricating the story” and there was “no indication that the former president, who was at one time a real friend of Epstein’s, and other celebrity names bandied about by Rothstein were involved in any way.” *Id.* Rothstein “‘used the [Epstein case] as a showpiece, as bait,’ said [William Scherer, an attorney for a number of Rothstein investors]. ‘That’s the way he raised all the money. He would use legitimate cases as bait for luring investors into fictional cases. All the cases he allegedly structured were fictional. I don’t believe there was a real one in there.’” *Id.*

⁴ Available at <http://www.browardpalmbeach.com/news/scott-rothstein-the-jeffrey-epstein-and-bill-clinton-ploy-6471700>.

- On November 9, 2009, the United States Attorney's Office for the Southern District of Florida filed a civil forfeiture action against certain property of Rothstein. (S.D. Fla. Case No. 0:09-cv-61780-WJZ D.E. 1.) The complaint said Rothstein "and others" had been operating a Ponzi scheme since 2005. (*Id.* ¶ 13.) It alleged that Rothstein had sold investors interests in non-existent structured settlements. (*Id.* ¶¶ 14–15.)
- On November 12, 2009, the *South Florida Sun-Sentinel* reported that "[t]he FBI confirmed Thursday what many have speculated since the Scott Rothstein scandal broke: The flashy lawyer could not have defrauded investors of hundreds of millions without help. 'I do not believe that this was a one-man show,' said John Gillies, head of the FBI in South Florida." Sally Kestin and Peter Franceschina, *FBI doubts Rothstein ran a Ponzi scheme alone*, S. Fla. Sun-Sentinel, Nov. 12, 2009.⁵
- On November 20, 2009, certain investors sued Rothstein and others. The plaintiffs alleged Rothstein had operated a Ponzi scheme and fabricated structured settlements, which he sold to investors. (17th Jud. Cir. Case No. 062009CA062943AXXXCE D.E. 3 ¶ 2.) The plaintiffs alleged "the purported settlements, *albeit* fraudulent, were based on actual cases being handled by RRA"—including, specifically, one of Edwards' cases against Epstein:

One of the settlements involved herein was based upon facts surrounding Jeffrey Epstein, the infamous billionaire financier. In fact, RRA did have inside information due to its representation of one of Epstein's alleged victims in a civil case styled *Jane Doe v. Jeffrey Epstein*, pending in the Southern District of Florida. Representatives of D3 were offered "the opportunity" to invest in a pre-suit \$30,000,000.00, court settlement against Epstein arising from the same set of operative facts as the *Jane Doe* case, but involving a different underage female plaintiff. See e-mail dated October 6, 2009 referencing Epstein which is attached hereto and incorporate[d] herein as Exhibit "B." To augment his concocted story Rothstein invited D3 to his office to view the thirteen banker's boxes of actual case

⁵ Available at http://articles.sun-sentinel.com/2009-11-12/live/fl-rothstein-associates-20091112_1_rothstein-rosenfeldt-adler-scott-rothstein-alan-sakowitz.

files in *Jane Doe* in order to demonstrate that the claims against Epstein were legitimate and that the evidence against Epstein was real. In particular, Rothstein claimed that his investigative team discovered that there were high-profile witnesses onboard Epstein's private jet where some of the alleged sexual assaults took place and showed D3 copies of a flight log purportedly containing names of celebrities, dignitaries and international figures. Because of these potentially explosive facts, putative defendant Epstein had allegedly offered \$200,000,000.00 for settlement of the claims held by various young women who were his victims. Adding fuel to the fire, the investigative team representative privately told a D3 representative that they found three additional claimants which Rothstein did not yet know about. . . .

Additionally, Rothstein used RRA's representation in the Epstein case to pursue issues and evidence unrelated to the underlying litigation, but potentially beneficial to lure investors into the Ponzi scheme. For instance, RRA relentlessly pursued flight data and passenger manifests regarding flights Epstein took with other famous individuals knowing full well that no under age women were on board and no illicit activities took place. RRA also inappropriately attempted to take the depositions of these celebrities in a deliberate effort to bolster Rothstein's lies.

(*Id.* ¶¶ 40–41.) Like the FBI, the investors alleged “[a] Ponzi scheme cannot be operated without insider help. Plaintiffs believe that additional members of RRA, including its non-lawyer investigators, were used by Rothstein to perpetuate, promote and facilitate the Ponzi scheme.” (*Id.* ¶ 103.)

- On November 23, 2009, the United States Attorney's Office for the Southern District of Florida filed an amended civil asset forfeiture complaint against Rothstein's property. The Government again alleged that Rothstein “and others” had been running a Ponzi scheme. (S.D. Fla. Case No. 0:09-cv-61780-WJZ D.E. 14.)
- On November 23, 2009, the *South Florida Sun-Sentinel* reported that Rothstein had said “karma is going to get him, but it's going to get other people, too. ‘You're in a town full of thieves, and at the end of the day, everyone will see. I'll leave it at that.’” Brittany

Wallman, *Scott Rothstein: "You're in a town full of thieves"*, S. Fla. Sun-Sentinel, Nov. 23, 2009.⁶

- On November 24, 2009, *The Miami Herald* reported that "Rothstein's law firm generated revenue of \$8 million in one recent year, yet his 70-lawyer firm had a payroll of \$18 million, prosecutors said. Rothstein, who owned half of Rothstein Rosenfeldt Adler, used investors' money from his Ponzi scheme to make up the shortfall, they said." Jay Weaver & Scott Hiaasen, *Feds: Scott Rothstein Ponzi scheme paid salaries at law firm*, *The Miami Herald*, Nov. 24, 2009.
- On November 25, 2009, Rothstein's investors filed an amended complaint against him, in which they repeated their allegations concerning the central role Edwards' cases played in Rothstein's Ponzi scheme. (*See* 17th Jud. Cir. Case No. 062009CA062943AXXXCE D.E. 12.)
- On November 27, 2009, the United States Attorney's Office for the Southern District of Florida filed a second amended civil asset forfeiture complaint against Rothstein's property. Once again, the Government alleged that Rothstein "and others" had been running a Ponzi scheme. (S.D. Fla. Case No. 0:09-cv-61780-WJZ D.E. 19.)
- On December 1, 2009, the FBI arrested Rothstein and the United States Attorney's Office for the Southern District of Florida filed a criminal information against him. (S.D. Fla. Case No. 0:09-cr-60331-JIC D.E. 1.) The information alleged that RRA was a criminal enterprise; that, from 2005 until November 2009, Rothstein and others had engaged in a pattern of racketeering activity that included mail fraud, wire fraud, money laundering, and

⁶ Available at http://www.sun-sentinel.com/sfl-mtblog-2009-11-scott_rothstein_havent_i_hurt-story.html.

conspiracy to launder money; that Rothstein and his unidentified co-conspirators had operated a Ponzi scheme and obtained \$1.2 billion from investors by fraud; and that Rothstein and his co-conspirators had “created false and fictitious documents, including confidential settlement agreements,” and “made false statements to current investors in order to convince them to re-invest in additional purported confidential settlement agreements.” (*Id.* ¶¶ 2–4, 6, 21, 23.)

Epstein Sues Edwards Based On The Information In The Public Record

On December 7, 2009, Epstein sued Edwards, Rothstein, and L.M. for racketeering, abuse of process, fraud, conspiracy to defraud, and violating the Florida Civil Remedies for Criminal Practices Act. (15th Jud. Cir. Case No. 50-2009-CA-040800-XXXX-MB D.E. 5.) Epstein’s complaint was informed by and referenced, cited to, or attached the facts, pleadings, and reports set forth above. (*Id.* See also 15th Jud. Cir. Case No. 50-2009-CA-040800-XXXX-MB D.E. 931 ¶¶ 5–13.) As Epstein explained in a subsequent motion to amend:

It is the essence of the Plaintiff’s action that the Defendants used actual lawsuits against Epstein or fabricated others to market investments to third parties for a return on investment on the Epstein Cases.

[It] [i]s not the intention or position of the Plaintiff to put into issue whether or not the actions alleged against Epstein by various [Edwards clients] are true or not. Instead, the essence of the complaint is to focus on the alleged misconduct of filing legal motions and other actions in pursuit of civil litigation unrelated to the merits or value of the cases brought against [Epstein].

(15th Jud. Cir. Case No. 50-2009-CA-040800-XXXX-MB D.E. 195 at 2–3.)

Discovery Establishes Additional Connections Between Edwards, Rothstein, And Rothstein’s Ponzi Scheme

Edwards testified that, when he joined RRA, he gave up his interest in the lawsuits filed against Epstein to the firm’s equity partners, *i.e.*, Rothstein and Rosenfeldt. (Edwards’ Nov. 10, 2017, Tr. at 338:10–339:7.) Rothstein subsequently “gained access” to discovery that Edwards

obtained in his three cases against Epstein and “used it to support his fairytale[.]” (Edwards’ Nov. 10, 2017, Tr. at 163:20–164:14.) In fact, Edwards knew Rothstein had requested these discovery files. (Edwards’ Nov. 10, 2017, Tr. at 321:14–19.) Edwards claimed he was told Rothstein wanted the files because he intended to try the cases against Epstein with Edwards. (Edwards’ Nov. 10, 2017, Tr. at 321:20–322:2.)

Edwards testified that he discussed with Rothstein “legal issues related to the case[s]” against Epstein and that they had conversations about the cases covered by the attorney-client privilege and attorney work product doctrine. (Edwards’ Mar. 23, 2010, Tr. at 112:7–16, 116:21–117:3.) Edwards also testified that he corresponded with and took some instructions from Russ Adler—identified by Rothstein as one of his co-conspirators. (Edwards’ Nov. 10, 2017, Tr. at 259:22–260:22; Rothstein’s June 14, 2012, Tr. at 24:6–7) Adler attended at least one of Epstein’s depositions. (Edwards’ Mar. 23, 2010, Tr. at 230:15–231:1.) Edwards and Adler also met with other attorneys at RRA to discuss the discovery sought from and investigation into Epstein. (Edwards’ Oct. 10, 2013, Tr. at 205:9–22.)

Edwards also testified that he met with Rothstein and Adler to discuss the Epstein cases. (Edwards’ Mar. 23, 2010, Tr. at 123:15–125:5.) This testimony squares with a document produced in this case showing that Rothstein was scheduled to attend an “Epstein conference” the week of July 26, 2009.

Additionally, Rothstein testified that he spoke with Edwards and Adler about the Epstein cases. (Rothstein’s June 14, 2012, Tr. at 23:24–24:13.) He testified that he knew he could use the Epstein cases for his Ponzi scheme based on his conversations with, among others, Adler and Edwards. (Rothstein’s June 14, 2012, Tr. at 25:12–19, 52:5–53:7.) Indeed, Rothstein testified that he “remember[ed] speaking to [Edwards] at least briefly the day or the day of [sic] or the day

before the actual investor's due diligence was going on as to what was going on.” (Rothstein's June 14, 2012, Tr. at 25:20–26:1.)

Likewise, in the investors' case against him, Rothstein testified that he socialized with Edwards and was not sure Edwards would have turned him in if he had discovered the Ponzi scheme. (Rothstein's Dec. 12, 2011, Tr. at 61:15–62:6.) He also testified that “either Brad Edwards or Russ Adler pointed out to me that one of the pieces of evidence they were using in the actual case was the flight manifest. And I actually used that to make a fairly big show.” (Rothstein's Dec. 12, 2011, Tr. at 59:14–25.)⁷ After confirming the original manifests that were in evidence in “the real case” did not have sensational names on them, he continued:

[I]t's interesting you bring that up because the way I came up with Bill Clinton and Prince Andrew was Mr. Adler and Mr. Edwards both told me on different occasions that the reason the case – when we were discussing the actual real case, the reason it was becoming so, quote, unquote, tasty [was] because they had information that [Epstein] had been flying Bill Clinton around and Prince Andrews [sic] around, the piece that was missing from the real case was the connection to the young girls.

(Rothstein's Dec. 12, 2011, Tr. at 60:22–61:5.) According to Rothstein, “as far as” Clinton and Prince Andrew were concerned, the connection to the young girls “was fiction[.]” (Rothstein's Dec. 12, 2011, Tr. at 61:6–9.)

C. EPSTEIN'S FIFTH AMENDMENT ASSERTION IS INADMISSIBLE PURSUANT TO THE FLORIDA EVIDENCE CODE OR, AT A MINIMUM, SHOULD BE PRECEDED BY A JURY INSTRUCTION THAT THERE IS NO NEGATIVE OR ADVERSE PRESUMPTION FROM INVOKING THIS CONSTITUTIONAL RIGHT.

1. Epstein's constitutional right to invoke the Fifth Amendment is inadmissible because it is irrelevant pursuant section 90.401, Florida Statutes.

None of the topics on which Epstein invoked the Fifth Amendment are relevant to the only issues in this action of Epstein's damages caused by Rothstein or whether Epstein had probable

⁷ See also Rothstein's Dec. 19, 2011, Tr. at 2278:13–20 (Rothstein testifying that he asked either Adler or Edwards to “isolate the flight manifest” for use with prospective investors).

cause when he sued Edwards. Therefore, any prior testimony or evidence in which Epstein invoked the Fifth Amendment must be excluded pursuant to section 90.401. Additionally, Edwards should not be permitted to ask Epstein similar irrelevant questions at trial that would expectantly lead to Epstein's assertion of his constitutional right.

The sole issues to be tried in this action are: (a) the amount of damages that Rothstein should pay Epstein; and (b) whether Edwards can prove Epstein lacked probable cause for filing the underlying lawsuit against Edwards.⁸ Edwards' malicious prosecution counterclaim is limited to an analysis of the civil proceeding filed by Epstein against Edwards, none of which relate to the merits of the cases filed by Edwards' clients against Epstein. Rather, Epstein's claims pled against Edwards only allege that Edwards, after he went to RRA, misused the litigation process by taking unnecessary discovery, filed a federal lawsuit solely for the purpose of mollifying investors, and took other steps such as alleging fraudulent transfers and asking for a \$15 million bond that were perceived by Epstein to support a scheme to defraud investors that came to RRA. Significantly, Epstein's claims did not apply to the time period before Edwards joined RRA as a partner and do not apply to the cases filed in 2008 against Epstein. The sole issue here is what Edwards did in the Epstein cases to incite investors while Edwards was a partner at RRA; not whether the tort claims were false.

⁸ The elements of malicious prosecution in Florida include: "(1) the commencement or continuance of an original judicial proceeding; (2) its legal causation by the present defendant against the present plaintiff who was the defendant in the original proceeding; (3) its bona fide termination in favor of the present plaintiff; (4) a lack of probable cause for such proceeding; (5) the presence of malice; and (6) damages conforming to legal standards resulting to the present plaintiff If the plaintiff is unable to prove any one of these elements, the malicious prosecution action will fail." *Endacott v. Int'l Hospitality, Inc.*, 910 So. 2d 915 (Fla. 3d DCA 2005) (citing *Alamo Rent-A-Car, Inc. v. Mancusi*, 632 So. 2d 1352, 1366 (Fla. 1994)).

Despite this distinction, throughout discovery and during pretrial preparations, it has become increasingly obvious that Edwards seeks to create a many-ringed circus of mini-trials within one trial in an effort to detract from the issue of whether Epstein had probable cause to have a reasonable belief that Edwards, an RRA partner, was involved in or connected to Rothstein's Ponzi scheme. The 2008 filed tort claims are over. While Edwards may or may not like the resolution of those claims, this malicious prosecution action simply is not the forum to relitigate the tort claims or the allegations in the 2008 Epstein cases. Indeed, contrary to Edwards' argument, whether or not the allegations in those cases are true, or not, is not relevant to the issues for this trial. Likewise, the true motivation behind Edwards doing what he did while a partner at RRA is likewise not relevant.

2. **In addition to being irrelevant to any material issue in this case, Epstein's assertion of his Fifth Amendment right is inadmissible based on its prejudicial effect.**

Any prior testimony and other evidence relating to Epstein's assertion of the Fifth Amendment must also be excluded because any remote or minimal probative value is clearly outweighed by the danger of unfair prejudice, confusion of issues, and the risks of misleading the jury. *See* § 90.403, Fla. Stat. "In weighing the probative value against the unfair prejudice, it is proper for the court to consider the need for the evidence; the tendency of the evidence to suggest an improper basis to the jury for resolving the matter, e.g., an emotional basis; the chain of inference necessary to establish the material fact; and the effectiveness of a limiting instruction." *Jones v. Alayon*, 162 So. 3d 360, 365 (Fla. 4th DCA 2015) (quoting *Johnson v. State*, 40 So. 3d 883, 886 (Fla. 4th DCA 2010)).

In *Jones*, the Fourth District Court of Appeal held that evidence of the defendant's post-accident bad acts could have inflamed the jury and caused them to award damages to the plaintiff out of a desire to punish the defendant. *Id.* at 366. *See also Wright v. State*, 19 So. 3d 277, 296

(Fla. 2009) (“Unfair prejudice has been described as an undue tendency to suggest decision on an improper basis, commonly, though not necessarily, an emotional one. . . . This rule of exclusion is directed at evidence which inflames the jury or appeals improperly to the jury’s emotions.”) (citations and internal quotations omitted); *Stewart v. Drileaus*, 226 So. 3d 990, 996 (Fla. 4th DCA 2017) (recognizing the inflammatory effects of evidence of a party’s alcohol use in the context of an action arising from a car accident, and holding such evidence inadmissible as unduly prejudicial where liability is admitted) (citing *Neering v. Johnson*, 390 So. 2d 742, 744 (Fla. 4th DCA 1980)); *Datus v. State*, 126 So. 3d 363, 365 (Fla. 4th DCA 2013) (explaining “[t]estimony which evokes sympathy for a victim may be inadmissible on the ground that its probative value is substantially outweighed by the risk of unfair prejudice.”)

Allowing Edwards to use the portions of any prior questioning to which Epstein asserted the Fifth Amendment or to ask questions that will inevitably lead to the assertion of the Fifth Amendment would be unfairly prejudicial, confuse the issues, invoke the jury’s emotions, and/or mislead the jury from the true issues in this action. Because of the nature of the claims against Epstein in these other cases, even instructing the jury on the actual elements of malicious prosecution or giving a limiting instruction would not stop the jury from being misled and/or confused, resulting in only one emotional conclusion of finding against Epstein based on Epstein being accused (in another case) of sexual molestation of a minor. See *Thigpen v. United Parcel Servs., Inc.*, 990 So. 2d 639, 650-51 (Fla. 4th DCA 2008) (describing the balancing test under Fla. Stat. § 90.403 as follows: “In weighing the claim of unfair prejudice against probative value, the trial court is required to consider the need for the evidence, the tendency of the evidence to suggest to the jury an improper basis for resolving the matter, the chain of inference necessary to establish the material fact, and the effectiveness of a limiting instruction”).

3. **In the unlikely judicial determination allowing testimony or evidence of Epstein's invocation of his constitutional Fifth Amendment right, this testimony should be preceded by an instruction that there is no negative or adverse inference from doing so.**

If the Court does not exclude Epstein's prior testimony asserting the Fifth Amendment, the Court should instruct the jury that there is no negative or adverse inference they should draw from Epstein's constitutional right to remain silent. Courts have consistently held that there is no *requirement* to draw a negative inference from the assertion of the Fifth Amendment privilege. *See In re Carp*, 340 F. 3d 15, 23 (1st Cir. 2003); *Baxter v. Palmigiano*, 425 U.S. 308 (1976). In *Doe ex rel. Rudy-Glanzer v. Glanzer*, 232 F. 3d 1258, 1264 (9th Cir. 2000), the Ninth Circuit held that:

The *Baxter* holding is not a blanket rule that allows adverse inferences to be drawn from invocations of the privilege against self-incrimination under all circumstances in the civil context. Rather, lower courts interpreting *Baxter* have been uniform in suggesting that the key to the *Baxter* holding is that such adverse inference can only be drawn when independent evidence exists of the fact to which the party refuses to answer . . . Thus, an adverse inference can be drawn when silence is countered by *independent evidence* of the fact being questioned, but that same inference cannot be drawn when, for example, silence is the answer to an allegation contained in a complaint. In such instances, when there is no corroborating evidence to support the fact under inquiry, the proponent of the fact must come forward with evidence to support the allegation, otherwise no negative inference will be permitted. *See LaSalle Bank*, 54 F.3d at 391.

232 F.3d at 1264 (citations omitted).

The Fourth District Court of Appeal has similarly limited such adverse inferences against parties to "when they refuse to testify in response to **probative evidence** offered against them..." *Fraser v. Sec. & Inv. Corp.*, 615 So. 2d 841, 842 (Fla. 4th DCA 1993) (emphasis added); *see also Coquina Investments v. TD Bank, NA*, 760 F. 3d 1300, 1310 (11th Cir. 2014) (holding that "the Fifth Amendment does not forbid adverse inferences against parties ... when they refuse to testify in response to probative evidence offered against them") (quoting *Baxter v. Palmigiano*, 425 U.S. 308, 318 (1976)). Likewise, another court has held that "[b]ecause the

privilege is constitutionally based, the competing interests of the party asserting the privilege and the party against whom the privilege is asserted must be carefully balanced and the detriment to the party asserting it should be no more than is necessary to prevent unfair and unnecessary prejudice to the other side. *Nationwide Ins. Co. v. Richards*, 541 F. 3d 903, 910 (9th Cir. 2008).

The *Nationwide* court also recognized that:

under certain circumstances ... an adverse inference from an assertion of one's privilege not to reveal information is too high a price to pay. The tension between one party's Fifth Amendment rights and the other party's right to a fair proceeding is resolved by analyzing each instance where the adverse inference was drawn, or not drawn, on a case-by-case basis under the microscope of the circumstances of that particular civil litigation. The inference may not be drawn **"unless there is a substantial need for the information** and there is not another less burdensome way of obtaining that information." **The district court must determine 'whether the value of present[ing] the evidence [is] substantially outweighed by the danger of unfair prejudice' to the party asserting the privilege.** Moreover, the inference may be drawn only when there is independent evidence of the fact about which the party refuses to testify.

Id. at 912 (citations omitted and emphasis added).

Similarly, the topics on which Epstein has asserted the Fifth Amendment are not responsive to any material issue in this lawsuit, so that no adverse inference should be permitted under *Fraser*. Epstein's claims against Edwards were never about the merit of the tort cases that Edwards filed against Epstein prior to joining RRA. Moreover, to permit adverse inferences may actually be contrary to other evidence obtained during discovery. For instance, at his deposition, Epstein asserted the Fifth Amendment when asked, "[d]id sexual assaults ever take place on a private airplane on which you were a passenger." Edwards wants to present this testimony to convince the jury that Epstein may have, in fact, known of such sexual assaults, even though Edwards himself admitted that he took depositions of three pilots who had, at various times, flown Epstein and his passengers, despite Edwards' knowledge that none of his clients had testified that any improper conduct occurred on airplanes. *See* Edwards' Nov. 10, 2017, Tr. at 166:10-22 (admitting

that if his clients testified truthfully, they admitted that there was no improper conduct on airplanes).⁹

As another example, one of Epstein's allegations in his Complaint against Edwards was that Edwards abused the litigation process when he attempted to take discovery in the tort lawsuits from well-known individuals in an attempt to force a higher settlement (in accordance with the false representations that RRA was making to investors). When asked about whether he ever socialized with these celebrities in the presence of females under the age of 18, Epstein invoked his Fifth Amendment privilege. Again, Edwards will try to use this as an admission that he did so at trial to negate the probable cause shown by Edwards' unusual litigation tactics. *See* Epstein's March 17, 2010 Tr. at 93:18–95:14 (Bill Richardson); 92:16–93:15 (David Copperfield); 91:20–92:4 (Bill Mottola); 90:3–7 (Alan Dershowitz)

Similarly, under the *Nationwide* analysis, there should be no adverse inference because the value (if any) of an adverse inference on these topics to the malicious prosecution counterclaim is substantially outweighed by the danger of unfair prejudice to Epstein, as set forth above. Again, whether or not Epstein has procured minors for prostitution, whether he ever had physical contact with Edwards' clients in the Epstein cases, or whether sexual assaults took place on private airplanes while he was a passenger, have nothing to do with whether or not Edwards can meet his burden to prove his malicious prosecution counterclaim against Epstein. Edwards cannot meet his burden to show entitlement to an adverse inference.

⁹ All three pilots ultimately also testified that there was no such conduct on any flights that they were on.

4. **If any Fifth Amendment testimony is admitted, it should be preceded by a jury instruction that the invocation of this constitutional right should not create a negative or adverse presumption.**

If the Court decides to permit this evidence, and to permit adverse inferences, the Court should make it clear to the jury that adverse inferences are not the same as admissions or presumptions. Courts have clearly distinguished between the two. For instance, in *Palmas Y Bambu, S.A. v. E.I. Dupont De Nemours & Co., Inc.*, 881 So. 2d 565, 582 (Fla. 3d DCA 2004), the court held that “an inference, unlike a presumption, is “[a] logical and reasonable conclusion of fact not presented by direct evidence but which, by process of logic and reason, a trier of fact may conclude exists from the established facts.”

Edwards cannot solely rely on Epstein’s assertion of the Fifth Amendment as an admission or presumption on elements that Edwards must prove to prevail on his malicious prosecution claim, such as lack of probable cause. *Coquina Investments v. Rothstein*, No. 10-60786-CIV, 2012 WL 4479057 (S.D. Fla. Sept. 28, 2012) is particularly instructive. In *Coquina*, the plaintiffs made investments in 2009 with Edwards’ partner, Scott Rothstein, and sued TD Bank for allegedly aiding and abetting Rothstein’s fraud. At trial, the plaintiff called TD Bank’s former regional vice president as a witness, who asserted his Fifth Amendment privilege to questions regarding his role in the Rothstein fraud. The court instructed the jury that, “Mr. Spinosa’s assertion of his Fifth Amendment privilege . . . is not a proper basis for finding TD Bank liable in this case,” and that the assertion of the privilege (and any adverse inferences from it) could only be considered by the jury “in conjunction with other evidence to be presented.” *Id.* at *9. On post-verdict motions, the court confirmed that, “[a] jury can only draw an adverse inference against a party as to a particular fact when independent evidence exists of the fact to which the party refuses to answer. In other words, a judgment cannot rest solely on the adverse inference.” *Id.* at *10.

Other courts' holdings are consistent with the reasoning from the *Coquina* court. The Seventh Circuit has held, citing *Baxter v. Palmigiano*, 425 U.S. 308 (1976), that an assertion of the Fifth Amendment privilege must be "weighed in light of other evidence rather than leaving directly and without more to the conclusion of guilt or liability." *LaSalle Bank Lake View v. Seguban*, 54 F. 3d 387 (7th Cir. 1995). Likewise, in *National Acceptance Co. of America v. Bathalter*, 705 F. 2d 924, 930 (7th Cir. 1963), the Seventh Circuit held that the failure to answer the allegations of a civil complaint based on an assertion of the Fifth Amendment privilege could not be construed as an admission of those allegations. *See also Centennial Life Ins. Co. v. Nappi*, 56 F. Supp. 222, 228 (N.D. N.Y. 1997) ("An adverse inference against the party invoking the Fifth Amendment by itself is insufficient to establish the absence of a genuine issue of material fact").

Here, Edwards intends to ask the jury to draw a negative or adverse presumption based on Epstein's assertion of his constitutional right to remain silent. At his deposition on November 10, 2017, Edwards admitted that he had no evidence of Epstein's state of mind or the facts and circumstances known to Epstein regarding probable cause to file his Complaint other than Epstein himself. *See Edwards' Nov. 10, 2017, Tr. at 276:24 – 278:15*. Given his lack of evidence, Edwards is trying to rely on Epstein's invocation of the Fifth Amendment privilege against self-incrimination in order to dispel Epstein's probable cause for having a reasonable belief that Edwards' overly zealous litigation tactics as an RRA partner indicated that Edwards was involved with Rothstein's Ponzi scheme. *See Edwards' Nov. 10, 2017, Tr. at 227:13-229:13* (Edwards testifying that he argued Epstein's invocation of the Fifth Amendment as an admission in a federal action and stating "that's going to happen in this case, too.").

Clearly, Epstein's exercise of his right to remain silent has nothing to do with his perception and reasonable belief that Edwards' actions were connected to Rothstein's Ponzi scheme and

investor-luring. *Coquina Investments v. Rothstein*, No. 10-60786-CIV, 2012 WL 4479057 (S.D. Fla. Sept. 28, 2012) and other similar cases have made it clear that invocation of the Fifth Amendment cannot be the sole basis for a verdict or judgment. As a result, if this Court concludes that Epstein's Fifth Amendment assertions has some relevance to Edwards' burden of proving Epstein had no probable cause to believe Edwards' involvement with RRA partner Rothstein, then any admission of this testimony must be preceded by an instruction to avoid jury confusion, emotional conclusion, or misleading from the true issues for their determination.

B. THIS COURT SHOULD EXCLUDE CERTAIN OF THE EXHIBITS IDENTIFIED ON EDWARDS' TRIAL EXHIBIT LIST.

1. The Exhibits Should Be Excluded Pursuant To Florida Statute Sections 90.401 and 90.403.

The vast majority of the exhibits identified on Edwards' November 7, 2017, Amended Exhibit List (D.E. 1043) should be excluded because they are irrelevant to the case at hand pursuant to Florida Statute section 90.401. To the extent Edwards could argue that any of the exhibits are relevant, any alleged "probative value is substantially outweighed by the danger of unfair prejudice, confusion of issues, misleading the jury, or needless presentation of cumulative evidence." § 90.403, Fla. Stat., *Dailey v. Multicon Dev., Inc.*, 417 So. 2d 1106, 1107 (Fla. 4th DCA 1982). "'Unfair prejudice' has been described as 'an undue tendency to suggest decision on an improper basis, commonly, though not necessarily, an emotional one.' This rule of exclusion 'is directed at evidence which inflames the jury or appeals improperly to the jury's emotions.'" *Wright v. State*, 19 So. 3d 277 (Fla. 2009); *Byrd v. BT Foods, Inc.*, 26 So. 2d 600 (Fla. 4th DCA 2009). *See also Canales v. Compania De Vapores Realma, S.A.*, 564 So. 2d 1212 (Fla. 3d DCA 1990) (holding any probative value of testimony about marriage proposal plaintiff purportedly made offering money to woman to marry him so that he could avoid deportation, on issue of plaintiffs credibility, was far outweighed by its prejudicial effect); *DeSantis v. Acevedo*, 528 So. 2d 461 (Fla.

3d DCA 1988) (finding probative value of the defendant's cross-examination of the plaintiff and his main witness about prior unrelated incidents that insinuated that both the plaintiff and the witness had been dishonest was outweighed by prejudicial nature of questions).

For instance, Edwards identifies an Amazon receipt for a purchase of an erotic book (Exhibit 4), sex offender registrations (Exhibits 63 and 131), a massage table (Exhibit 59), messages from a notepad in Epstein's home (Exhibits 7, 28, 91), flight logs (Exhibits 9, 51, 52, 87-90, 122), phone records (Exhibits 10, 11), photos and videos of Epstein's home (Exhibits 16, 42, 43) and school records and yearbooks from the plaintiffs in the lawsuits which Edwards filed against Epstein (Exhibits 23-26 and 96). None of these are relevant to whether Epstein lacked probable cause for filing his claims against Edwards or any element of Edwards' Counterclaim for malicious prosecution. Similarly, Edwards lists jail visitation records (Exhibit 12), probation records (Exhibits 13 and 62), probable cause affidavits and search warrants (Exhibits 14, 17, 27, 44), victim statements (Exhibit 15), and other documents relating to the plaintiffs in Edwards' lawsuits against Epstein (Exhibits 5, 6, 18, 46, 97, 99) and Epstein's criminal cases (Exhibits 29-31, 48-50, 57-58, 60-61, 64, 70-74, 76, 79, 100, 102-105, 119). Again, none of these are relevant to the elements in Edwards' malicious prosecution counterclaim.

These are just examples. On November 15, 2017, Epstein filed his Objections to Edwards' Amended Exhibit List (D.E. 1058) identifying all of the exhibits which Epstein claims are irrelevant pursuant to Florida Statute section 90.401 (indicated by "3" under the objections column) and which are unfairly prejudicial, misleading to the jury and confusing pursuant to Florida Statutes section 90.403 (indicated by "4" under the objection column). All of these should be excluded.

Edwards' inclusion of these exhibits on his Amended Exhibit List, as well as others that fall into these categories, demonstrates that Edwards' goal in this litigation is to re-litigate his prior cases against Epstein, which have already settled, and to try this case based on prejudicial and inflammatory allegations which have no bearing on the malicious prosecution counterclaim.

2. Exhibits Relating to Prior Convictions and Criminal Matters Should Also Be Excluded.

Certain exhibits on Edwards' Amended Exhibit List (D.E. 1043) should also be excluded as it is well-settled law that evidence of prior convictions, acquittals or arrests is irrelevant in a civil action and thus inadmissible. *Eggers v. Phillips Hardware Co.*, 88 So. 2d 507 (Fla. 1956); *Kelley v. Mutnich*, 481 So. 2d 999, 1001 (Fla. 4th DCA 1986). As such, Epstein's conviction, as well as any testimony or evidence of any other criminal investigation, is inadmissible. This includes, for example, documents relating to Epstein's June 30, 2008 conviction (Exhibits 30, 103, 104), his criminal plea colloquy (Exhibits 31, 57-58), the Palm Beach State Attorney's Office's criminal file for Epstein (Exhibit 29), probable cause affidavits (Exhibits 14, 44), reports from the Palm Beach Police Department (Exhibits 48-50, 105), grand jury subpoenas (Exhibit 76), a criminal score sheet (Exhibit 61), probation records (Exhibit 62), property searches and surveillance (Exhibits 79, 100, 102), and other exhibits identified on Edwards' Amended Exhibit List that relate to the criminal investigation and proceedings. Again, these are just examples.

3. Other Exhibits Should be Excluded as Inadmissible Hearsay.

In addition to being irrelevant, many of the exhibits listed above are inadmissible hearsay. The documents which Epstein alleges contain hearsay are identified by the number "7" in the objection column of his Objections to Edwards' Amended Exhibit List (D.E. 1058). "Hearsay is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." § 90.801(c), Fla. Stat. (2014). In fact, many of

these documents contain double hearsay, so that even if Edwards could establish an exception for the first layer of hearsay, the documents still contain inadmissible hearsay. Many of these documents contain contents that are entirely based upon prior statements made by individuals and other extrinsic documents; all of which undeniably do not fall into an exception. *See Reichenberg v. Davis*, 846 So. 2d 1233 (Fla. 5th DCA 2003). “The problem here is that, in both reports, the authors simply related the substance of what the witnesses had told the authors. These witness’s statements, even though contained within the business records, do not fall within the exception, because they were not based upon the personal knowledge of an agent of the “business.” *Id.* at 1234; *see also Harris v. Game and Fresh Water Fish Com’n*, 495 So. 2d 806, 808 (Fla. 1st DCA 1986); *Van Zant v. State*, 372 So. 2d 502 (Fla. 1st DCA 1979). Accordingly, any hearsay documents, and any reference or testimony related thereto, should be excluded.

4. Certain Exhibits Should Be Excluded As Inadmissible Opinion Testimony.

Other documents on Edwards’ Amended Exhibit List (D.E. 1043), identified by the number “6” in the objections column of Epstein’s Objection (D.E. 1058), irrefutably contain opinion statements about Epstein who is party to, and possible witness in, this case, rendering it improper opinion testimony about the credibility of a witness. *Alvarado v. State*, 521 So. 2d 180 (Fla. 3d DCA 1988). In *Childers v. State*, 936 So. 2d 585 (Fla. 1st DCA 2006), the court was faced with a similar issue, and in denying the admission of the information/documents, avowed:

admission of the notice would have been similar to admitting an opinion by the State concerning Junior’s character, truthfulness, and credibly. Such opinion testimony regarding a witness’ reputation for truthfulness is clearly inadmissible. *See Antone v. State*, 382 So.2d 1205, 1213-14 (Fla. 1980) (holding improper a question of a witness which sought “to elicit the individual and personal view of the witness.”); *Hernandez v. State*, 575 So.2d, 1321, 1322 (Fla. 4th DCA 1991) (holding that it was reversible error to admit testimony of police officers and teacher that sexual abuse victim was truthful. “A witness invades the jury’s exclusive province when that witness gives his or her personal views of the credibility of another witness.”); *Alvarado v. State*, 521

So.2d 180, 181 (Fla. 3d DCA 1988) (holding that an opinion of a witness concerning his or her belief as to the truthfulness of another witness clearly inadmissible.”); *Morrison v. State*, 818 So.2d 432, 451 (Fla. 2002) (holding that it was improper to allow personal opinion to establish reputation for truthfulness without laying a foundation based on knowledge of the witness’ reputation in community for truthfulness); *Wyatt v. State*, 578 So.2d 811, 813 (Fla. 3d DCA 1991) (holding that section 90.405, Florida Statutes, does not permit opinion testimony regarding evidence of character); Ehrhardt, Florida Evidence § 405.2 at 258 (“Opinion testimony, concerning a person’s character has traditionally been inadmissible on the basis that it is too unreliable; it will be tainted by the underlying prejudice and bias, of the person expressing the opinion on expressing the opinion.”).

Id. at 595-96.

5. Exhibits Should Be Excluded For Other Reasons As Well.

Other exhibits are overbroad and vague, so that they should also be excluded. At least some of the overbroad exhibits are identified by “11” in the objection column on Epstein’s Objections to Edwards’ Amended Exhibit List. (D.E. 1058.) It is impossible to tell whether other exhibits are overbroad because they are so vague. For instance, “all emails produced by Defendant and/or all emails produced by Plaintiff in this case” (Exhibit 123) is so vague that Epstein cannot tell what is included, and, as of this date, Edwards has not provided a copy of the exhibit, so that Epstein has reserved the objection. Likewise, the flight logs are overbroad (*see, e.g.*, Exhibits 87-90), as they appear to contain information for every single flight in a particular time period.

Finally, other documents should be excluded as confidential information of third parties and Epstein’s confidential financial information. These are identified, to the extent possible, by “14” in the objections column on Epstein’s Objections to Edwards’ Amended Exhibit List. (D.E. 1058.)

C. THIS COURT SHOULD PRECLUDE THE USE OF ANY DEROGATORY ADJECTIVES WHEN REFERENCING EPSTEIN.

Throughout this proceeding, Edwards has continually referenced Epstein by the use of provoking and offensive misnomers, such as “billionaire pedophile” or “convicted child molester.”

Such commentary is inappropriate and, at trial, would irrefutably be done solely to impermissibly “inflamm[e] the jury or appeal[] improperly to the jury’s emotions.” *Wright v. State*, 19 So. 3d 277 (Fla. 2009). Such name-calling constitutes improper conduct by counsel and reversible error. *Schubert v. Allstate Ins. Co.*, 603 So. 2d 554 (Fla. 5th DCA 1992) (defense counsel’s inflammatory and improper remarks to jury about plaintiff, his witnesses and counsel warranted new trial). Improper comments by trial counsel, **even when not objected to at trial**, constitute reversible error if they impair the jury’s calm and dispassionate consideration of the evidence and result in an unfair trial. *Moore v. Taylor Concrete & Supply, Inc.*, 553 So. 2d 787 (Fla. 1st DCA 1989); *Nelson v. Reliance Ins. Co.*, 368 So. 2d 361 (Fla. 4th DCA 1978). As such, preventing Edwards from doing so at the outset can avoid such issues.

Likewise, Epstein’s criminal conviction, and status as a registered sex offender, is inadmissible by law. *Eggers v. Phillips Hardware Co.*, 88 So. 2d 507 (Fla. 1956); *Kelley v. Mutnich*, 481 So. 2d 999, 1001 (Fla. 4th DCA 1986). Epstein’s conviction, as well as any testimony or evidence of any other criminal investigation, is inadmissible, as it is impermissibly being offered as “relevant solely to prove bad character” and would unduly inflame and prejudice the minds of the jury against Epstein, as would any pejorative that Edwards may choose to use. § 404(2)(a), Fla. Stat. As explained above, Edwards seeks to depict Epstein as someone culpable of numerous federal criminal offenses allegedly involving sexual misconduct with minor females to further his pursuits in this case and in the *Doe* case. Consequently, such inapposite commentary from Edwards, his counsel or his witnesses is impermissible.

D. THIS COURT SHOULD EXCLUDE REFERENCES TO ANY CASES AGAINST EPSTEIN WHICH WERE NOT PROSECUTED BY EDWARDS.

While it is foreseeable that a limited amount of the information regarding Edwards’ prosecution of the three cases against Epstein (such as the fact that they existed) could potentially

be germane to the issues in this case, it would be impermissible to use such information to impermissibly “inflamm[e] the jury or appeal[] improperly to the jury’s emotions” or “solely to prove bad character.” *Wright*, 19 So. 3d at 277; *Byrd*, 26 So. 2d at 600. Moreover, any mention of or use of information from any other case is absolutely improper, as such evidence has no bearing on the malicious prosecution counterclaim and is unfairly prejudicial. *Honeywell Intern., Inc. v. Guilder*, 23 So. 3d 867 (Fla. 3rd DCA 2009); *Long Term Care Found., Inc. v. Martin*, 778 So. 2d 1100, 1102-03 (Fla. 5th DCA 2001) (allegations in a different lawsuit against defendant were not relevant and were highly prejudicial since “under section 90.403, Florida Statutes, any relevance the complaint might have had was outweighed by the unfair prejudice against the [defendant]”). “It is inconsistent with the notions of fair trial for the state to force a defendant to resurrect a prior defense against a crime for which the defendant is not on trial.” *Jacobs v. Atl. Coast Ref., Inc.*, 165 So. 3d 714 (Fla. 4th DCA 2015) (finding that “because the prior case was settled, none of the allegations therein were proven”).

As seen from Edwards’ November 9, 2017, Amended Exhibit List (D.E. 1043) and Seventh Amended and Supplemental Witness List (D.E. 1042), it is apparent that he intends to use as much information from other cases as possible solely to impermissibly inflame the jury and appeal to the jury’s emotions, or solely to prove bad character. *See Wright*, 19 So. 3d at 277; *Byrd*, 26 So. 2d at 600. “If the introduction of the evidence tends in actual operation to produce a confusion in the minds of the jurors in excess of the legitimate probative effect of such evidence, if it tends to obscure rather than illuminate the true issue before the jury then such evidence should be excluded.” *City of Miami v. Calandro*, 376 So. 2d 271, 272 (Fla. 3d DCA 1979) (citing *Perper v. Edell*, 44 So. 2d 78 (Fla. 1949)); *see also Agrofollajes, SA v. EI Du Pont De Nemours & Co.*, 48 So. 3d 976 (Fla. 3d DCA 2010) (probative value outweighed by prejudicial effect when evidence

improperly becomes focus of trial); *Maldonado v. Allstate Ins. Co.*, 789 So. 2d 464 (Fla. 2d DCA 2001) (probative value of bicyclist's status as an illegal alien was outweighed by unfair prejudice, confusion of the issues and misleading of the jury, as the evidence and instruction concerning status as an illegal alien improperly changed the focus of the jury's attention).

A trial court's discretion in determining the relevancy of evidence "is limited by the rules of evidence and applicable case law." *Thigpen v. United Parcel Servs., Inc.*, 990 So. 2d 639, 645 (Fla. 4th DCA 2008) (citing *Johnson v. State*, 863 So. 2d 271, 278 (Fla. 2003)); *Hayes v. Wal-Mart Stores, Inc.*, 933 So. 2d 124, 126 (Fla. 4th DCA 2006); *DeVillie v. State*, 917 So. 2d 1058, 1059 (Fla. 4th DCA 2006); *Dixon v. State*, 911 So. 2d 1260, 1262 (Fla. 4th DCA 2005); *Reed v. State*, 883 So. 2d 387, 389 (Fla. 4th DCA 2004). "Relevant evidence is inadmissible if its probative value is substantially outweighed by the danger of unfair prejudice." § 90.403, Fla. Stat. Here, these extrinsic cases are not relevant to the malicious prosecution counterclaim against Epstein and are intended only to mislead the jury.

E. THE COURT SHOULD EXCLUDE TESTIMONY OR EVIDENCE THAT EPSTEIN SETTLED PRIOR OR SUBSEQUENT CLAIMS, SUITS, OR SETTLEMENTS, INCLUDING THE AMOUNTS THEREOF FOR PLAINTIFFS NOT REPRESENTED BY EDWARDS.

Pursuant to section 90.408, Florida Statutes, "[e]vidence of an offer to compromise a claim which was disputed as to validity or amount, as well as any relevant conduct or statements made in negotiations concerning a compromise, is inadmissible to prove liability or absence of liability for the claim or its value." § 90.408, Fla. Stat. (2016). The meaning of this statute is equally clear; to wit: "[n]o evidence of settlement is admissible at trial on the issue of liability." *Saleeby v. Rocky Elson Const., Inc.*, 3 So. 3d 1078, 1083 (Fla. 2009). "[I]t is a practical impossibility to eradicate from the jury's minds the considerations that where there has been a payment there must have been liability." *City of Coral Gable v. Jordan*, 186 So. 2d 60, 63 (Fla. 3d DCA 1966) ("The public

policy of this state favors amicable settlement of disputes and the avoidance of litigation. This policy is implemented by excluding evidence of an offer to compromise and a release or covenant not to sue tortfeasors.”). While the disposition of the cases that Edwards was prosecuting against Epstein on behalf of three plaintiffs may in certain limited respects be germane to this litigation, any other settlements are not.

Furthermore, this evidence should be excluded under section 90.403, Florida Statutes. As seen from both Edwards’ Seventh Amended and Supplemental Witness List (D.E. 1042) and his Amended Exhibit List (D.E. 1043), it is apparent that he intends to use as much information from other cases as possible solely to impermissibly “inflame[] the jury or appeal[] improperly to the jury’s emotions,” or “solely to prove bad character.” *Wright v. State*, 19 So. 3d 277 (Fla. 2009); *Byrd v. BT Foods, Inc.*, 26 So. 3d 600 (Fla. 4th DCA 2009). “[I]f the introduction of the evidence tends in actual operation to produce a confusion in the minds of the jurors in excess of the legitimate probative effect of such evidence if it tends to obscure rather than illuminate the true issue before the jury then such evidence should be excluded.” *City of Miami v. Calandro*, 376 So. 2d 271, 272 (Fla. 3d DCA 1979) (citing *Perper v. Edell*, 44 So. 2d 78 (Fla. 1949)). *See also Agrofollajes, S.A. v. E.I. Du Pont De Nemours & Co. Inc.*, 48 So. 3d 976 (Fla. 3d DCA 2010) (probative value outweighed by prejudicial effect when evidence improperly becomes focus of trial); *Maldonado v. Allstate Ins. Co.*, 789 So. 2d 464 (Fla. 2d DCA 2001) (probative value of bicyclist’s status as an illegal alien was outweighed by unfair prejudice, confusion of the issues, and misleading of the jury, as the evidence and instruction concerning status as an illegal alien improperly changed the focus of the jury’s attention).

CONCLUSION

For the reasons stated above, and in reliance upon the applicable law cited herein, Jeffrey Epstein respectfully requests that this Court enter an Order *in Limine* precluding Bradley J. Edwards, his counsel, and his witnesses from making any argument, statement, evidence, or comment, as well as precluding from use at trial, the items/witnesses/arguments listed above.

CERTIFICATE OF SERVICE

I certify that the foregoing document has been furnished to the attorneys listed on the Service List below on November 17, 2017, through the Court's e-filing portal pursuant to Florida Rule of Judicial Administration 2.516(b)(1).

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