JEFFREY EPSTEIN,

Plaintiff,

vs.

SCOTT ROTHSTEIN, individually, and BRADLEY J. EDWARDS, individually.

Defendants.
_____/

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT IN AND FOR PALM BEACH COUNTY, FLORIDA

CASE NO.: 502009CA040800XXXXMBAG

JUDGE: CROW

PLAINTIFF/COUNTER-DEFENDANT JEFFREY EPSTEIN'S MOTION FOR A PROTECTIVE ORDER AND INCORPORATED MEMORANDUM OF LAW

Plaintiff/Counter-Defendant Jeffrey Epstein ("Epstein"), by and through his undersigned counsel and pursuant to Rule 1.280(c) of the *Florida Rules of Civil Procedure*, hereby requests this Court to enter a Protective Order from Defendant/Counter-Plaintiff Bradley Edwards's ("Edwards") Request for Production and Net Worth Interrogatories. In support thereof, Epstein states:

INTRODUCTION

On December 18, 2012, this court granted Edwards's Second Renewed Motion for Leave to Amend his Third Amended Counterclaim to add a claim in punitive damages.[1] Immediately thereafter, on December 21, 2012, Edwards served Epstein with two separate discovery requests, to wit: Request for Production and Notice of Service of Interrogatories (hereinafter together "financial net worth discovery"). *See Exhibit A*, attached hereto. Edwards, however, had not yet served his Amended Counterclaim, which purports to state a claim for punitive damages. Edwards served his Fourth

[1] This ruling is currently the subject of a Petition for a Writ of Certiorari before the Fourth District Court of Appeal.

Amended Counterclaim upon Epstein on January 9, 2013.[2]

Long before Edwards ever served this financial net worth discovery on Epstein, Edwards embarked on a systematic and purposeful course of conduct to ferret out potential plaintiffs who Edwards could persuade to retain him to pursue litigation against Epstein. By his own count, Edwards has represented no less than ten (10) plaintiffs in lawsuits against Epstein and at least one (1) case against the United States of America in which Edwards seeks to nullify a properly negotiated, executed and fully performed agreement between the United States of America and Epstein. To further this course of conduct, Edwards and his legal team[3] have used highly aggressive tactics. Such tactics have included extra-judicial interviews with foreign and domestic press, inflammatory postings on the Farmer, Jaffe, Weissing, Edwards, Fistos & Lehrman, P.L., website (where Edwards is a partner), the Farmer, Jaffe, Weissing, Edwards, Fistos & Lehrman, P.L., Facebook page, and various other websites. *See Composite Exhibit B,* attached hereto. Significantly, in order to continue to improperly garner enhanced media attention, both Edwards and his legal team insist upon referring to Epstein with various emotionally charged pejoratives, while Edwards continues to troll for clients to engage him to bring civil damage suits against Epstein.

Edwards has established a pattern of using high profile personalities and/or celebrities who are alleged Epstein acquaintances by implicating their knowledge of and/or participation in the alleged activities for which Edwards seeks to hold Epstein civilly liable. To that end, Edwards has noticed for deposition many of these public

[2] This Fourth Amended Counterclaim is the subject of a Motion to Dismiss filed by the undersigned and set for hearing before this court.

[3] Jack Scarola has also engaged in extra-judicial interviews with the foreign press. Notably, Jack Scarola is the attorney of record in the 2009 case of CMA v. Epstein; Palm Beach County Case No.: 502009CA006332XXXXMB.

personalities and celebrities. Such conduct becomes tabloid fodder when counsel then engages in extra-judicial interviews with the press. For example, on March 13, 2011, the British publication "The Observer" reported that "Prince Andrew could be pulled into the mess as a witness. Edwards's [sic] lawyer, Jack Scarola, said last week that his team intended to try and get a statement from the prince about what he may or may not have seen while attending parties with Epstein." *See Exhibit B*, attached hereto. The news story continued:

> Though the prince is likely to claim diplomatic immunity, that step will not keep his name out of the court papers or the headlines.... The same thing goes for previous cases involving Epstein. They amount to a potential source of PR torture for the royal family as media scrutiny continues.

In closing, the article states that "there is no evidence or suggestion that Andrew was involved" but that "[e]ven the hint of a possibility of a federal probe is another reason for the headline writers to start sharpening their pens for those links to Epstein."

While Edwards has never taken the deposition of Prince Andrew, the value of the purported connection between Epstein and Prince Andrew to the tabloids means that the tabloids will continue to print these stories for as long as these stories continue to be titillating. Undoubtedly Edwards, whether individually or through his legal team, anticipates that through the publication and mass dissemination of such stories, Edwards can entice additional females willing to claim themselves as Epstein victims in order to hire Edwards to take a shot at securing another payday from Epstein. To that end, Edwards and his legal team will continue to financially benefit as they file litigation after litigation against Epstein. Although it was indisputable that these well-known personalities had no involvement in the cases prosecuted by Edwards against Epstein, as

described more fully below, this is just further proof of Edwards's continued efforts to embarrass, harass and oppress Epstein.

Although Edwards steadfastly maintains that Epstein filed his lawsuit for nefarious reasons, it is significant to note that the same ultimate underlying facts on which Epstein based his lawsuit were also the underlying facts in a lawsuit filed in Broward County Circuit Court in 2009 by William Scherer, Esq., founding partner of Conrad & Scherer, LLP. *See Exhibit C Complaint in Razorback Funding, LLC v. TD Bank N.A,* attached hereto. Notably, the plaintiffs in this case accepted a settlement of $180 million based upon the facts as presented in the Complaint. *See Exhibit E*, attached hereto. In their Complaint, the plaintiffs specifically allege that

> one of the settlements involved herein was based upon facts surrounding **Jeffrey Epstein**, the infamous billionaire financier…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….To augment his concocted story Rothstein invited D3 to his office to view the thirteen banker's boxes of actual case files in *Jane Doe* in order to demonstrate that the claims against Epstein were legitimate and that the evidence against Epstein was real….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.

Exhibit C, p. 16. (Emphasis added). The Complaint further alleges

> Rothstein used RRA's representation in the Epstein case to pursue issues and evidence unrelated to the underlying litigation but which was 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.

Exhibit C, p. 17.

At a hearing attended by Edwards in the United States Bankruptcy Court for the Southern District of Florida in the matter of *In Re Rothstein, Rosenfeldt, Adler, P.A., debtor*, on August 4, 2010, Scherer argued before the court:

> In November we filed a lawsuit in State Court and we alleged that as part of Mr. Rothstein and the firm, and the firm's employees, and maybe some of the firm's attorneys, conspired to use the Epstein/LM litigation in order to lure $13.5 million worth of my victims, my clients, into making investments in these phony settlements...And as we alleged in that State Court proceeding...that sometime in October, that my clients were invited into the Rothstein firm with Mr. Rothstein, and he explained that with Mr. Edwards representing LM, a victim of Mr. Epstein, and these are kind of sensational allegations and it's been printed widely...So he used the real case in order to defraud my clients into investing into these phony settlements...I believe that Mr. Rothstein and others in the firm also told that story to a lot of other people... In addition, as we have alleged, that Mr. Edwards and the firm put sensational allegations in the LM case that they knew were not true, in order to entice my clients into believing that Bill Clinton was on the airplane with Mr. Epstein...And to the extent that any lawyers from the RRA firm, former lawyers, made a ton of money or however Mr. Farmer [Edwards's current law partner] talked about it...So we know it wasn't just Mr. Rothstein spinning the tale, there were a lot of people in the firm.

See Hearing Transcript, pgs. 17-22, Exhibit D, attached hereto. Scherer further explained to the Court that the Complaint only "names Rothstein. It does not name Mr. Edwards...it lays out the facts and says other people in the firm... we want to see the documents and see whether they had involvement." *See Exhibit D,* p. 22, lines 1-8. The documents to which Scherer refers are boxes of files relating to the LM/Epstein case which Rothstein and others used as bait to entice the plaintiffs into investing in the Epstein cases. *See Exhibit D*, p. 22-23. This is just another example of Edwards's systematic and continual harassment, embarrassment and oppression of Epstein.

On January 25, 2012, Edwards took his second deposition of Epstein on the Corrected Second Amended Complaint in this case. Counsel for Edwards, Jack Scarola,

took this opportunity to ask irrelevant, harassing and embarrassing questions of Epstein. Counsel for Epstein objected. Thereafter, Scarola placed on the record that he intended to continue the line of questions regarding sexual information in order to bring a RICO claim against Epstein. Since to date Edwards has not commenced a RICO claim against Epstein, this line of questioning was intended for no purpose other than to harass, embarrass and oppress of Epstein. To this end, Edwards is indisputably using the discovery process in this case in other collateral litigation. Significantly, Edwards has established a pattern of using discovery in one case in collateral litigation; it has become his modus operandi.

Edwards used privileged discovery obtained in *Doe v. Epstein* in other cases. More significantly, this discovery was the subject of a Joint Stipulation limiting the future use and production of this discovery. The discovery in question comprised certain communications between Epstein's counsel and the U. S. Attorney that fell squarely within the protections of Federal Rules of Evidence 408 and 410. On August 26, 2010, Epstein's counsel received a correspondence from Steven R. Jaffe, Esq., a partner in Edwards's law firm to advise Epstein

> of our intention to use in two pending court cases and a Justice Department complaint process correspondence between Epstein's representatives and federal prosecutors....
>
> we do not believe that we are under any restrictions with regard to using these materials in filed court cases and are not aware of any court order restricting our use of this correspondence....
>
> Epstein recently chose to settle the lawsuit of Doe v. Epstein, Case No. 08-CV-80893-CIV-MARRA/JOHNSON, shortly before trial. The settlement he reached followed a few days after he provided to us, as Jane Doe's legal counsel, correspondence between his representatives and the U.S. Attorney's Office....

> As you also know, Epstein has chosen to file a lawsuit against one of us (Brad Edwards, Esq.)...
>
> [i]n light of these facts, we intend to use this correspondence in [*Epstein v. Rothstein* and *Doe v. United States of America*].

In response thereto Epstein requested that the court issue a protective order citing his justifiable concern that the documents would be used for purposes other than those contemplated by the Federal Rules of Civil Procedure for discovery; specifically that the documents would be disseminated in the press.[4]

Now, with his financial net worth discovery requests, Edwards seeks unfettered access to Epstein's financial information, business ventures, and business associates. Epstein seeks to be protected from Edwards's harassing, oppressive, and embarrassing discovery requests. For the reasons stated more fully below, Epstein seeks a protective order from this financial net worth discovery.

MEMORANDUM OF LAW

Rule 1.280(c) of the Florida Rules of Civil Procedure affords the Court discretion to grant protective orders "for good cause shown" and "to protect a party from annoyance embarrassment, oppression, or undue burden or expense that justice requires." FLA. R.CIV. P. Rule 1.280(c) (2012); *Orlando Sports Stadium, Inc. v. Sentinel Star Company,* 316 So. 2d 607, 610 (Fla. 4th DCA 1975); *Gross v. Security Trust Company,* 453 So. 2d 944, 945 (Fla. 4th DCA 1984). Upon the showing of good cause, the court may protect the party by issuing an order "that discovery not be had." FLA. R.CIV. P. Rule 1.280(c) (2012). Epstein has made a showing of good cause in the facts of the foregoing discussion. Moreover, the record evidence of this case demonstrates that if given the

[4] Under the terms of the Joint Stipulation the court retained jurisdiction to hear a Motion brought there under.

opportunity, Edwards and his legal team will use the discovery process to ask Epstein and unrelated third parties, including his business associates, irrelevant and harassing, embarrassing, and oppressive questions not designed to lead to the discovery of any admissible evidence relevant in this case. As a result Epstein will suffer irreparable harm, which cannot be remedied on appeal after final judgment if he is compelled to produce the requested financial net worth discovery.

A protective order prohibiting discovery is appropriate where the party seeking the protective order will suffer irreparable harm through the requested disclosure, and such harm is unlikely to be adequately remedied on appeal after final judgment. *Martin-Johnson, Inc. v. Savage*, 509 So. 2d 1097 (Fla. 1987). In the seminal case of *Martin-Johnson, Inc. v. Savage,* the Florida Supreme Court recognized that there is a category of information that might be disclosed during discovery that "may reasonably cause material injury of an irreparable nature." *Id.* at 1099. The Court described such "cat out of the bag material" as that which "could be used by an unscrupulous litigant to injure another person or party outside the context of the litigation." *Id.*

Should discovery issue and Epstein be required to disclose the requested information, the proverbial cat will be out of the bag. Litigant Edwards and his legal team have already demonstrated a propensity toward using information acquired through the discovery process in extra-judicial conversations and interviews with the press. The aforementioned Scarola statement quoted in the British tabloid is but one example. Edwards's numerous conversations with journalist Conchita Sarnoff, cited in his privilege logs, further provides incontrovertible evidence of Edwards's propensity to take information outside the litigation context. Such extra-judicial misuse of discovery is

harassing, embarrassing and oppressive to Epstein, thereby mandating a protective order from such invasive discovery. As Edwards demonstrated by circumventing the Joint Stipulation in *Doe v. Epstein*, referenced above, negotiated protective orders between Epstein and Edwards are insufficient to protect Epstein from the disclosure of privileged documents. In this instance, even with the proper protections put into place, Epstein's privileged documents were used in collateral litigation to further Edwards's purposes.

Second, the issue of collateral litigation is important in this case. In a usual situation, the parties to an action in which privileged discovery is sought and compelled to be produced may enter into a stipulated agreement prohibiting the further (mis)use of the privileged discovery in collateral litigation. *See e.g. Cordis Corp. v. O'Shea,* 988 So. 2d 1163 (Fla. 4th DCA 2006). Here, however, the facts are somewhat different and create a heightened need for protection: Edwards and his legal team are the attorneys in the collateral litigation. Moreover, the type of discovery sought, a party's financial net worth in connection with a claim in punitive damages, requires a special heightened level of proof before it can be requested. Yet, once the "cat is out of the bag;" that is once Edwards and his legal team are privy to Epstein's most personal of information, Edwards and his legal team will have the net worth knowledge to utilize against Epstein in collateral litigation, without ever having to make the required showing under the Florida Statutes for punitive damages. Such a perverted and inevitable use of Epstein's financial net worth discovery will eviscerate the legislative intent behind §768.72 of the *Florida Statutes.* Since Edwards continues to troll for purported clients to sue Epstein, Epstein will suffer exactly the irreparable harm cited in *Cordis Corp.* For this reason, the protective order must be granted.

Next, the case of *Woodward v. Berkery,* 714 So. 2d 1027 (Fla. 4th DCA 1998) is both controlling and instructive. Although the issue in this case is a modification of child support, the issues involved regarding the public personality and the disclosure of his financial net worth and fears of improper use after disclosure are analogous to those in the instant case. Therefore, the instructions of the Fourth District Court of Appeal must apply to the facts of this instant case. The case involved the well-known singer/entertainer Tom Jones, a.k.a Thomas John Woodward, who sought a protective order from discovery of his financial information. *Id.* at 1029. The request for information included

> information and documentation...as to all sources of his income, including fees from his performances, royalties, investments and the like, for him individually as well as from companies in which he may have some interest. She also seeks detailed information and documents evidencing the entire range of his investments, assets and liabilities.

Id. at 1032. Jones objected by blanket objection. *Id.* The trial court overruled this objection and ordered him to respond. *Id.* Mr. Jones responded by disclosing a stipulated monthly income and sought a protective order "asking that his discovery responses be kept confidential," which the court denied. *Id.* On appeal, the court said:

> The discovery of financial worth information that is not material to any issue reasonably likely to be contested and—equally important—that has been sought primarily to embarrass and bring undue pressure on a litigant through unwarranted publicity by disclosure of sensitive personal financial information to the press would be incurable by any possible action we could take on final appeal from an order modifying the child support. Without a protective order, irrelevant details of Jones's financial holdings that he has apparently guarded assiduously from disclosure to the press would be disclosed through the mother to the Miami Herald and thence beyond recall. Moreover the revelation would have resulted from a fundamentally erroneous legal interpretation of the discovery rules that would inevitably evade review until long after the disclosure had been made...

> The constitution of the State of Florida contains an express right of privacy. Although there is no catalogue in our constitutional provision as to those matters encompassed by the term *privacy,* it seems apparent to us that personal finances are among those private matters kept secret by most people.... Disclosure of income and personal investments is often not made even to siblings and others within the immediate family, much less to strangers. Private financial worth information is thus usually withheld from the world at large unless the courts compel such disclosure. Even then, disclosure is made only so far as necessary...
>
> We conclude that the failure to analyze the need for the requested discovery under the unique circumstance of this case was a departure from the essential requirements of law which if uncorrected will lead to the kind of irreparable harm contemplated by *Martin–Johnson*....

Id. at 1035-37. (Citations omitted).

In the case at hand, Epstein is an internationally well-known personality whose connections to and with influential and famous people have been well documented in the tabloids. Through the plethora of extra-judicial statements from Edwards and his counsel to the press, as demonstrated above, Epstein himself has been and continues to be fodder for the tabloids. This court must, under the controlling case of *Woodward*, consider the unique circumstances of this case and not depart from the essential requirements of law which can lead to the kind of irreparable harm contemplated by *Martin–Johnson.* For this reason, the court must grant Epstein's request for a protective order.

The amount of an award of punitive damages is limited by §768.73 of the *Florida Statutes*. §768.73 FLA. STAT. (2012). This statute creates a presumptive limit on recovery of punitive damages "not to exceed the greater of (1) Three times the amount of compensatory damages awarded... or (2) The sum of $500,000. *Id. See also Owens-Corning Fiberglas Corp. Ballard,* 749 So. 2d 483, 485 (Fla. 3d DCA 1999); *R.J. Reynolds Tobacco Co. v. Martin*, 53 So. 3d 1060 (Fla. 1st DCA 2010). Although the statute also permits the fact finder to award an uncapped amount of punitive damages

where the fact finder determines that the defendant in a civil action had the specific intent to harm the plaintiff at the time of the injury, this uncapped award is not without limitations. §768.73(1)(c) FLA. STAT. (2012). In *Engle v. Lligget Group, Inc.*, 945 So. 2d 1246 (Fla. 2006), the Florida Supreme Court expressly held that

> consistent with United States Supreme Court decisions...that recognized due process limits on punitive damages, that a review of the punitive damages award includes an evaluation of the punitive and compensatory amounts awarded to ensure a reasonable relationship been the two.
>
> The United States Supreme Court has stated that a review of a punitive damages award must include consideration of these three guideposts to determine whether the award is unconstitutionally excessive: (1) the degree of reprehensibility of the defendant's misconduct; (2) the disparity between the actual or potential harm suffered by the plaintiff and the punitive damages award; and (3) the difference between the punitive damages awarded by the jury and the civil penalties authorized in comparable cases....
>
> In sum, courts must ensure that the measure of punishment is both reasonable and proportionate to the amount of harm to the plaintiff and to the general damages recovered.

Id. at 1265-66. (Citations omitted).

Under the facts as plead, Edwards would have to prove entitlement to uncapped punitive damages under the statute. To do so, he would have to prove Epstein not only had the specific intent to harm Edwards but also that Epstein did in fact harm Edwards yet the facts are such that Edwards cannot do this. Edwards's allegation in his Counterclaim that Epstein filed his case in the absence of good faith basis loses all credibility in light of the fact that third party investors received a $180,000,000.00 settlement in a lawsuit alleging the same basic set of underlying facts. Moreover, Edwards cannot prove that he was actually harmed by Epstein's actions. For example, according to Edwards own website, his recent verdicts have totaled more than

$25,960,000.00, exclusive of those that are confidential and not disclosed; he has been named one of the "Top 40 under 40" by the National Trial Association in 2012; he was listed in the 2011 edition of the Daily Business Review Top Florida Verdicts & Settlements; he has an active calendar of teaching engagements and by his own statements has taken on several new John Doe clients in yet another high profile sex abuse scandal. Accordingly, he will not be entitled to uncapped punitive damages. For these reasons, Epstein must be granted a protective order.

CONCLUSION

Based on the arguments presented above and the authorities cited in support thereof, Plaintiff/Counter-Defendant Jeffrey Epstein respectfully requests that this Court enter a Protective Order from Defendant/Counter-Plaintiff Bradley Edwards's Request for Production and Net Worth Interrogatories, and grant such other and further relief as deemed necessary and proper.

WE HEREBY CERTIFY that a true and correct copy of the foregoing was served upon all parties listed below, via Electronic Service, this January ___, 2013.

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