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: HAFELE

PLAINTIFF/COUNTER-DEFENDANT JEFFREY EPSTEIN'S RENEWED MOTION TO STAY PROCEEDINGS OR ALTERNATIVE MOTION TO CONTINUE THE TRIAL DATE SET IN THIS MATTER

Plaintiff/Counter-Defendant Jeffrey Epstein ("Epstein"), by and through his undersigned counsel and pursuant to Rule 9.310 of the *Florida Rules of Appellate Procedure*, hereby requests that this Court stay these proceedings until the Florida Supreme Court renders its Opinion on the certified conflict between the Fourth District Court of Appeal's decision in this matter and the decision rendered by the Third District Court of Appeal in *Wolfe v. Foreman*, 128 So. 3d 67 (Fla. 3d DCA 2013). Alternatively, should this Court not enter an Order staying these proceedings, Epstein requests that this Court continue the trial date it set for this matter. In support thereof, Epstein states:

INTRODUCTION

On May 19, 2014, based upon the Third District Court of Appeal's decision in *Wolfe*, this Court granted Epstein's Motion for Summary Judgment as to both counts of Defendant/Counter-Plaintiff Bradley Edwards's ("Edwards") Complaint, Abuse of Process and Malicious Prosecution, and entered Final Judgment in accordance therewith. Edwards timely appealed this Court's ruling as to his Malicious Prosecution count to the Fourth District Court of Appeal. The issue was fully briefed, and on November 12, 2015,

the Fourth District Court of Appeal reversed this Court's ruling and certified conflict with the Third District Court of Appeal's decision in *Wolfe*. The Fourth District Court of Appeal issued its Mandate on December 1, 2015, and on December 10, 2015, Epstein filed his Notice of Discretionary Jurisdiction seeking review by the Florida Supreme Court. On December 15, 2015, the Florida Supreme Court filed an Order stating that "[t]he proceedings in this Court in the above case are hereby stayed pending disposition of Debrincat v. Fischer, Case No. SC15-1477, which is pending in this Court." *Debrincat* is the lead case in which the Florida Supreme Court will decide the certified conflict issue.

On or about March 8, 2016, Epstein filed a Motion to Stay Proceedings or Alternative Motion to Continue the Trial Date Set in this Matter. On or about March 22, 2016, this Court denied Epstein's Motion, without prejudice, stating that if there was "movement" on the *Debrincat v. Fischer* matter, then it would entertain this Motion. Since the March 22, hearing date, the *Debrincat* case has been fully briefed and Oral Argument has been set before the Florida Supreme Court on the *Debrincat* case for August 31, 2016. A true and correct copy of the Order granting and setting Oral Argument is attached hereto as "Exhibit A." Accordingly, as demonstrated more fully below, staying these proceedings until such time as the Florida Supreme Court issues its decision regarding the conflict between the Third District Court of Appeal's decision in *Wolfe* and the Fourth District Court of Appeal's decision in the case at bench will both conserve judicial resources and prevent interference with the jurisdiction of the appellate court.

MEMORANDUM OF LAW

This Court has the authority and discretion to grant Epstein's Motion. *Gas Investments v. Land O' Sun Realty, Ltd.*, 643 So. 2d 1107, 1108 (Fla. 4th DCA 1994) ("The granting of a stay of proceedings by a trial court, pending the outcome of an action in another court, is in the broad discretion of the trial court."); *Ricigliano v. Peat, Marwick, Main & Co.,* 585 So. 2d 387, 387 (Fla. 4th DCA 1991). However, "this discretionary power is not without limitation. The stay should be granted unless there are special circumstances, such as undue delay by the first court, that warrant the denial of a stay. Thus, absent any such special circumstances, a trial court abuses its discretion in refusing to grant a stay based on the principle of priority." *Spacebox Dover, LLC v. LSREF2 Baron LLC,* 112 So. 3d 751, 752-53 (Fla. 2d DCA 2013). *See also Fedorov v. Citizens State Bank*, 24 So. 3d 1227, 1229 (Fla. 3d DCA 2009).

In the case at hand, it is proper for this Court to grant Epstein's Motion to Stay or Continue this matter while the Florida Supreme Court is considering an issue that involves the same issues as those with which these same parties are faced. *Bergman v. Kaplan*, 922 So. 2d 982 (Fla. 4th DCA 2005). In *Bergman,* the Fourth District Court of Appeal found that the trial court had departed from the essential requirements of the law in denying the Petitioner's motion to stay the proceedings when there was a pending appeal from an order that involved the same parties and issue. *Id.* The *Bergman* court further opined that "[i]n these types of cases, courts have recognized the injurious affect of multiple, conflicting orders and the need for the circuit courts not to interfere with the jurisdiction of the courts of appeal when issues are then pending before them." *Id.* at 983. *See also Allstate Ins. Co. v. Titusville Total Health Care,* 848 So. 2d 1166, 1167 (Fla. 5th

DCA 2003) ("Courts have often held that it is appropriate for one court to stay an action in order to avoid a waste of judicial resources if a similar issue is pending in another action and will be dispositive."); *Solomon v. Gordon*, 4 So. 2d 710, 711 (Fla. 1941) ("Where two actions are pending between the same parties involving the same state of facts and aiming to accomplish substantially the same result, the court may stay proceedings in the latter action until the other shall have been heard and decided and the same rule applies where the prior action is pending on appeal."); *Pilevsky v. Morgans Hotel Group Mgmt., LLC*, 961 So. 2d 1032, (Fla. 3d DCA 2007).

The Fourth District Court of Appeal's decision to reject the applicability of the Litigation Privilege to Edwards's Malicious Prosecution claim against Epstein in the instant case is the sole appellate issue pending in the Florida Supreme Court. The Florida Supreme Court stayed those proceedings pending its disposition of the appeal in *Debrincat* regarding the conflicting opinions of the District Courts of Appeal as to the applicability of the Litigation Privilege to a Malicious Prosecution claim. Irrefutably, the Florida Supreme Court's resolution of that conflict, which is the same issue upon which both the Fourth District Court of Appeal's decision and this Court's granting of Summary Judgment herein were based, may dispose of the central issue of Epstein's liability in the case at hand. Consequently, it would be a waste of judicial resources to proceed to trial prior to the Supreme Court's resolution of this issue.

CONCLUSION

For all of the reasons above, and in reliance upon the case law cited above, Epstein respectfully requests that this Court enter an Order Staying these proceedings until such time as the Florida Supreme Court renders its decision, and such further and

other relief as this Court deems just 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 May 20, 2016.

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Supreme Court of Florida

TUESDAY, APRIL 12, 2016

CASE NO.: SC15-1477
Lower Tribunal No(s).:
4D14-1855;
502009CA015835XXXXMB

RICHARD DEBRINCAT, ET AL. vs. STEPHEN FISCHER

Petitioner(s) Respondent(s)

The Court previously accepted jurisdiction. The Court will hear oral argument at 9:00 a.m., Wednesday, August 31, 2016.

A maximum of twenty minutes to the side is allowed for the argument, but counsel is expected to use only so much of that time as is necessary.

NO CONTINUANCES WILL BE GRANTED EXCEPT UPON A SHOWING OF EXTREME HARDSHIP.

A True Copy
Test:

John A. Tomasino
Clerk, Supreme Court

kj
Served:

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