

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
RESPONSE TO DEFENDANT/COUNTER-PLAINTIFF BRADLEY EDWARDS'
MOTION FOR SEPARATE TRIALS OR, IN THE ALTERNATIVE TO ADJUST THE
ORDER OF PROOF**

Plaintiff/Counter-Defendant, Jeffrey Epstein ("Epstein"), responds in opposition to Defendant/Counter-Plaintiff, Bradley Edwards' ("Edwards") Motion for Separate Trials or, in the Alternative, to Adjust the Order of Proof, and states:

INTRODUCTION

Just 24 hours after filing his Motion for Separate Trials/Alternative Motion to Adjust the Order of Proof, Edwards filed a "Supplement" to that motion, arguing for the first time that Epstein's case against Rothstein may not proceed because it is not at issue. Specifically, Edwards asked this Court to *sever* Epstein's claim against Rothstein from Edwards' counterclaim, because the only pending claim against Rothstein is a Conspiracy to Commit Abuse of Process count contained in the Second Amended Complaint, to which no default has been entered and which has not been set for trial. (*See* Edwards' Supplement to Motion for

Separate Trials at p. 1). Yet Edwards himself set the entire matter for trial. At the time Edwards moved to set the case for trial, Edwards had been a counter-plaintiff for 8 years! Edwards' operative pleading was his Answer and Counterclaim filed December 12, 2009. Edwards was a counter-plaintiff for nearly 3,000 calendar days, clearly the majority of this Action.

The severance (i.e., bifurcation) issue, however, is unrelated to the question of whether the court case is "at issue." Epstein addresses the latter issue in his Motion to Remove Case From Trial Docket and Comply With Mandate Set Forth in Rule 1.440, which is filed contemporaneously with this response. This response addresses the bifurcation issue only.

Bifurcation is not appropriate in this case and should be denied for several reasons.

First and foremost, it would be a complete waste of judicial resources. The claim and counterclaim are intertwined; severing them would convert what should be one trial into two, with duplicative evidence and testimony from many of the same witnesses. And Epstein's case-in-chief against Rothstein will not require much trial time—two days tops, of the ten days that have been allotted for trial.

Second, Edwards has waived bifurcation. The Joint Pretrial Stipulation—in which the parties contemplate a consolidated trial—controls and is binding on the parties and the Court. The fact that Edwards requests bifurcation at the Eleventh Hour, less than two weeks before trial, in a case that has been pending for *over eight years*, suggests the risk of prejudice and confusion is not nearly as troublesome as he now suggests. And while the case undoubtedly presents complex issues, a complex case does not require bifurcation.

Third, Edwards will not be prejudiced by a consolidated trial on both claims—as contemplated by the parties in their pretrial stipulation. Epstein will agree to a statement read by the Court that Edwards need not ask a single question of the witnesses called in Epstein's case

against Rothstein, because Epstein dismissed Edwards from that original civil proceeding. The Court also may instruct the jury that the presentation of damages evidence in Epstein's case against Rothstein in no way suggests or implies that Edwards is liable for the damages Epstein claims.

Edwards' alternative motion, to adjust the order of proof, should be denied, too. Epstein filed the original civil proceeding, and his claim, naturally and chronologically, should proceed first. Moreover, Epstein's claim against Rothstein provides the necessary background for Edwards' counterclaim against Epstein—the latter, counterclaim arises from the originating claim. In keeping with judicial economy and, as contemplated by the parties in their pretrial stipulation, the Court should first hear evidence on the original claim (Epstein v. Rothstein), and leave the admission of evidence and the decision on the counterclaim pending until after the determination of the main claim.

ARGUMENT

Bifurcation Would Result in Needless Litigation and a Waste of Judicial Resources

Florida Rule of Civil Procedure 1.270(b), states:

The court **in furtherance of convenience** or to avoid prejudice may order a separate trial of any claim, crossclaim, counterclaim, or third-party claim or of any separate issue or of any number of claims, crossclaims, counterclaims, third-party claims, or issues.

(Emphasis added).

“Although the matter of separation of the issues to be tried rests in the trial court's discretion, a single trial generally tends to lessen the delay, expense and inconvenience to all concerned, and the courts have emphasized that **separate trial should not be ordered unless such disposition is clearly necessary, and then only in the furtherance of justice.**” *Maris Distrib. Co. v. Anheuser-Busch, Inc.*, 710 So. 2d 1022, 1024 (Fla. 1st DCA 1998) (emphasis

added; citation and internal quotation marks omitted). For example, “It is improper to sever a counterclaim . . . from the plaintiff’s claim, when the facts underlying the claims of the respective parties are inextricably interwoven.” *Id.* See also *Yost v. Am. Nat. Bank*, 570 So. 2d 350, 352-53 (Fla. 1st DCA 1990) (“Where the evidence to be submitted on plaintiff’s cause of action is the same as, or is interrelated with, the evidence on the counterclaim, it is appropriate to try the claims together.”).

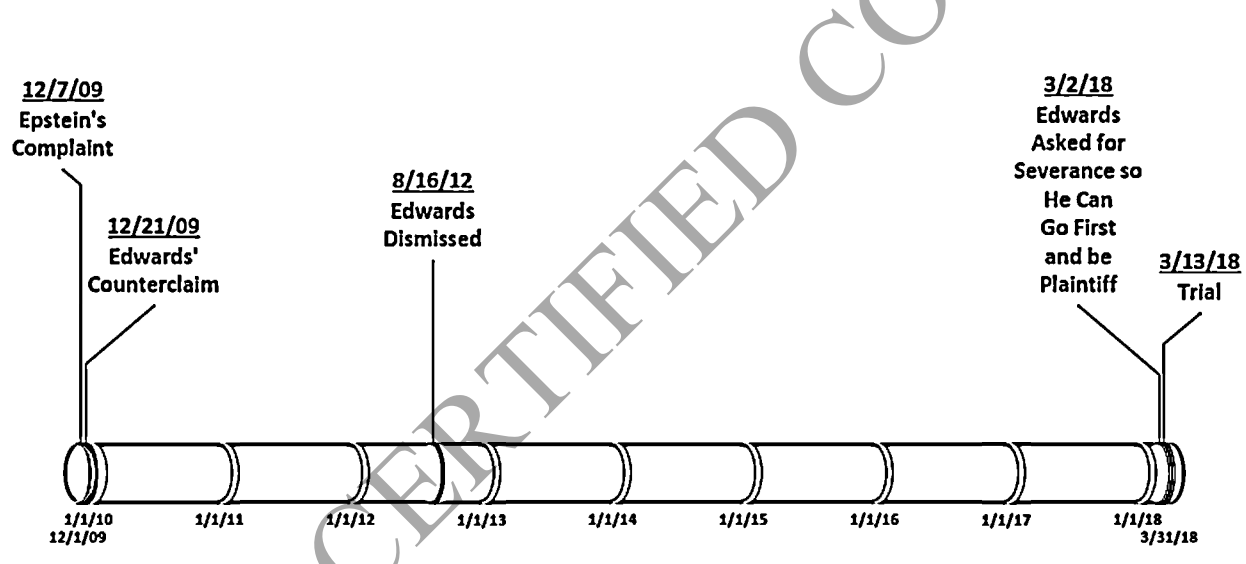
To conduct two trials in this case is not convenient or necessary; nor would it further justice. Instead, it would be a complete waste of judicial resources. As reflected throughout the pretrial stipulation, Epstein’s claim against Rothstein and Edwards’ counterclaim against Epstein are inextricably interwoven—the facts underlying the two counts are interrelated and involve many of the same witnesses. As such, “bifurcation will not simplify the trial; instead, it will cause inconvenience and prejudice to [Epstein] in presenting [his] case.” *Fortin v. T & M Lawn Care, Inc.*, 178 So. 3d 438, 438 (Fla. 4th DCA 2015).

Ordering bifurcation where claims are inextricably woven warrants certiorari relief. See *id.* at 438-39 (granting certiorari petition and “quash[ing] bifurcation order because the bifurcated claims are inextricably interwoven.”). See also *Rooss v. Mayberry*, 866 So. 2d 174, 175 (Fla. 5th DCA 2004) (granting certiorari and quashing order to bifurcate: bifurcating liability and damages issues, which were intertwined, would convert what should be one trial into two, with duplicative testimony from many of the same witnesses); *Maris Distrib. Co. v. Anheuser–Busch, Inc.*, 710 So. 2d 1022, 1024 (Fla. 1st DCA 1998) (quashing order severing breach of contract cause of action from other counts which arose in the context of the contract, as facts underlying all counts were interrelated).

In keeping with judicial economy, Epstein will present his case-in-chief against Rothstein in an expeditious manner. Of the ten days that have been allotted for trial, Epstein needs but two days (max) to present his damages case against Rothstein.

Edwards Has Waived Bifurcation, and the Parties Stipulated to a Consolidated Trial

By waiting until the Eleventh Hour to request separate trials, Edwards has waived his severance argument. Just a glance at the timeline below demonstrates the belatedness of his request:



Notably, Edwards failed to raise the severance issue at any of the recent special set hearings, or in any of the dozens of motions filed in the last few months. He could have raised the issue at the October 3, 2017 hearing, when a brief continuance was granted, at any of the three substantive hearings in November and December. But not once did he utter a peep about bifurcation.

Edwards has further waived bifurcation based upon the Joint Pretrial Stipulation,¹ and his last-minute request for separate trials should be denied.

¹ A copy of the Joint Pretrial Stipulation, filed December 22, 2017, is attached as **Exhibit A**.

“The Pretrial Stipulation is a powerful blueprint that fully enables a well-run and fair trial.” *Palm Beach Polo Holdings, Inc. v. Broward Marine, Inc.*, 174 So. 3d 1037, 1039 (Fla. 4th DCA 2015). It is “the trump card upon which all parties to any litigation can virtually always rely.” *Id.* at 1038.

While the decision to bifurcate is within the trial court’s discretion,² “[p]retrial stipulations prescribing the issues on which a case is to be tried are **binding upon the parties and the court, and should be strictly enforced.**” *Broche v. Cohn*, 987 So. 2d 124, 127 (Fla. 4th DCA 2008) (emphasis added; citations omitted). “Further, it is the policy of the law to encourage and uphold stipulations in order to minimize litigation and expedite the resolution of disputes.” *Id.* (citation and internal quotation marks omitted).

Here, Edwards and Epstein entered into a pretrial stipulation which sets forth the Stipulated Facts and Statement of Issues of Fact for Determination at Trial. **The first disputed issue to be tried is the “Case Against Rothstein”.** The *second* issue to be tried is Edwards’ malicious prosecution counterclaim. The parties therefore stipulated to a consolidated trial, and Edwards has waived bifurcation.

Denial of Bifurcation Will Not Prejudice Edwards

Edwards argues separate trials are necessary, or the jury will be confused by the default liability judgment against Rothstein, and Edwards will have to object to evidence not being offered against him and appear to be defending Rothstein. These purported concerns of Edwards are impossible to take seriously at this stage of the proceedings. Indeed, the fact that Edwards requests bifurcation at the Eleventh Hour, less than two weeks before trial, in a case that has been pending for *over eight years*, suggests the risk of prejudice and confusion is not nearly as troublesome as he now suggests.

² *Roseman v. Town Square Ass’n, Inc.*, 810 So. 2d 516, 520 (Fla. 4th DCA 2001).

In any event, no prejudice will come to Edwards by proceeding with a consolidated trial—as the parties agreed to do in their pretrial stipulation. To quell Edwards’ concerns, Epstein will agree to a statement read by the Court that Edwards need not ask a single question of the witnesses called in Epstein’s case against Rothstein, because Epstein dismissed Edwards from that original proceeding. The Court also may instruct the jury that the presentation of damages evidence in Epstein’s case against Rothstein in no way suggests or implies that Edwards is liable for the damages Epstein claims.

Epstein’s Case-in-Chief Must Proceed Before Edwards’ Counterclaim for Malicious Prosecution

Alternatively, Edwards requests that the order of proof be “adjusted” so the jury may resolve his counterclaim against Epstein before considering Epstein’s damages claim against Rothstein. (Mot. at ¶ 8). This request is illogical and unnecessary, and should be denied, too.

Naturally and chronologically, the Court should hear evidence on the originating claim and leave admission of evidence and the decision on the counterclaim pending until after resolution the main claim. Moreover, this order of proof is what the parties agreed to in the Joint Pretrial Stipulation—which stipulation is “binding upon the parties and the Court and should be strictly enforced.” *Broche*, 987 So. 2d at 127. In the Stipulation, the Issues of Fact for Determination at Trial are listed clearly in the following order:

1. **Case Against Rothstein.**
2. **Malicious Prosecution Counterclaim.**

(See Ex. A at C. 1.).

Regardless, it would be most efficient for Epstein to present his damages case against Rothstein *first*, because the Rothstein case provides the necessary background for, and in fact led to, Edwards’ interrelated malicious prosecution counterclaim. This is the only order of proof that

makes sense and which promotes judicial economy. *See* § 90.612(1)(b), Fla. Stat. (allowing trial judge to exercise reasonable control over presentation of evidence to avoid needless consumption of time). Epstein's originating claim must proceed first.

CONCLUSION

Plaintiff/Counter-Defendant, Jeffrey Epstein, respectfully requests that this Honorable Court enter an Order denying Defendant/Counter-Plaintiff, Bradley Edwards' Motion for Separate Trials, or in the Alternative, to Adjust the Order of Proof.

CERTIFICATE OF SERVICE

I certify that the foregoing document has been furnished to the attorneys listed on the Service List below on March 5, 2018, through the Court's e-filing portal pursuant to Florida Rule of Judicial Administration 2.516(b)(1).

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EXHIBIT A

NOT A CERTIFIED COPY

IN THE CIRCUIT COURT OF THE 15TH
JUDICIAL CIRCUIT OF FLORIDA, IN AND
FOR PALM BEACH COUNTY

Case No. 502009CA040800XXXXMBAG

JEFFREY EPSTEIN,

Plaintiff/Counter-Defendant,

v.

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

Defendants/Counter-Plaintiff.

JOINT PRETRIAL STIPULATION

Pursuant to this Court's Order Specially Setting Jury Trial Plaintiff/Counter-Defendant Jeffrey Epstein ("Epstein") and Defendant/Counter-Plaintiff Bradley Edwards ("Edwards") hereby submit this Joint Pretrial Stipulation.

- A. **List of All Pending Motions:** The trial of this matter is special set to commence on March 13, 2018. The parties anticipate that additional Motions will be filed before that date. Presently, the following Motions/Requests are pending:
1. 9/21/17, Edwards' four Motions to Compel and the following related filing:
 - a. 11/27/17, Epstein's Omnibus Response in Opposition to Edwards' Four Motions to Compel.
 2. 10/5/17, Epstein's Motion for Sanctions Pursuant to Violation of Confidential Settlement Agreement Against Edwards and His Counsel and the following related filing:
 - a. 11/8/17, Edwards' Response in Opposition.
 3. 10/26/17, Edwards' Motion for Protective Order.
 4. 11/6/17, Epstein's Supplemental Motion to Compel Discovery, and the following related filings:
 - a. 11/15/17, Edwards' Response in Opposition to Epstein's Supplemental Motion to Compel Discovery;

- b. 9/25/17, Epstein's Motion to Compel Discovery Responses from Edwards; and
 - c. 9/28/17, Edwards' Memorandum in Opposition to Epstein's Motion to Compel Discovery Responses.
- 5. 11/8/17, Edwards' Request for Judicial Notice Pursuant to Florida Statutes Section 90.202 and 90.203, and the following related filings:
 - a. 11/17/17, Epstein's Objection to Edwards' Request for Judicial Notice; and
 - b. 11/28/17, Epstein's Notice of Filing Supplemental Authority.
- 6. 11/13/17, Edwards' Motion in Limine Addressing Scope of Admissible Evidence and the following related filings:
 - a. 11/17/17, Edwards' Supplement to Motion in Limine Addressing Scope of Admissible Evidence;
 - b. 11/22/17, Epstein's Opposition to Edwards' Motion in Limine Addressing Scope of Admissible Evidence; and
 - c. 12/11/17, Edwards' Second Supplement to Motion in Limine Addressing Scope of Admissible Evidence.
- 7. 11/17/17, Edwards' Objection to Notice of Production from Non-Parties and the following related filing:
 - a. 11/13/17, Epstein's Notice of Production from Non-Parties.
- 8. 11/22/17, Epstein's Request for Judicial Notice.
- 9. 12/1/17, Edwards' Motion for Leave to Propound Limited Requests for Admission.
- 10. 12/4/17, Edwards' Notice of Filing Deposition Transcript Excerpts and Discovery Responses by Epstein Implicating the Fifth Amendment (as to Sections II – V only).
- 11. 12/4/17, Edwards' Notice of Filing Deposition Transcript Excerpts and Discovery Responses by Epstein Implicating the Attorney-Client Privilege.
- 12. 12/4/17, Edwards' Request for Judicial Notice Pursuant to Florida Statutes Section 90.202 and 90.203.
- 13. 12/8/17, Edwards' Notice of Filing Preliminary Objections and Counter Designations to Epstein's Deposition Designations.
- 14. 12/15/17, Epstein's Motion for Leave to Disclose Expert Witness

B. Stipulated Facts:

1. On June 30, 2008, Epstein entered a guilty plea for one count of felony solicitation of prostitution, a third-degree felony, and one count of procuring a person under the age of 18 for prostitution, a second-degree felony. (Plea, D.E. 1107.)
2. Edwards was admitted to The Florida Bar in March 2002. (Edwards' 11/10/17 Depo. 43:10-12.)
3. After being admitted to the Florida Bar, Edwards worked as an Assistant State Attorney at the Broward State Attorney's Office for approximately three years. (Edwards' 5/15/13 Depo. 6:11-15; Edwards' 11/10/17 Depo. 50:3-5.)
4. After leaving the Broward State Attorney's Office, Edwards went to work for the law firm of Kubicki Draper, where he worked for approximately three years handling insurance defense matters. (Edwards' 5/15/13 Depo. 7:3-10; Edwards' 11/10/17 Depo. 56:10-58:5.)
5. Edwards formed a Florida limited liability company on April 16, 2007, by the name of "The Law Office of Brad Edwards & Associates, LLC." (Sunbiz.org.)
6. Edwards began working at Rothstein, Rosenfeldt and Adler, P.A. ("RRA") in April 2009. (Edwards' 3/23/10 Depo. 13:19-22.)
7. Edwards' association with RRA terminated at the end of October or beginning of November 2009. (Edwards' 3/23/10 Depo. 15:5-11.)
8. While an employee of RRA, Edwards represented himself to the public, including Epstein, as a partner of RRA. (Edwards' 11/10/17 Depo. 189:22-192:9.)
9. Scott Rothstein ("Rothstein") was the managing partner and CEO of RRA. (Edwards' 11/10/17 Depo. 267:12-13.)
10. Rothstein voluntarily relinquished his law license in November 2009 and was disbarred by the Florida Supreme Court on November 25, 2009. (11/25/09 Opinion, *The Florida Bar v. Rothstein*, Supreme Court of Florida, Case No. SC09-2146.)

11. Rothstein was arrested and arraigned in federal court in Broward County, Florida on December 1, 2009. (12/1/09 Information, *United States of America v. Rothstein*, United States District Court, Southern District of Florida, Case No. 09-60331 (D.E. 1).)
12. In August and September 2008, while working at The Law Office of Brad Edwards & Associates, LLC, Edwards filed three separate lawsuits against Epstein on behalf of three separate clients: L.M., E.W. and Jane Doe. (8/14/08 Complaint, *Jane Doe v. Jeffrey Epstein*, United States District Court, Southern District of Florida, Case No. 08-CV-80893 (D.E. 1); 9/11/08 Complaint, *L.M. v. Jeffrey Epstein*, 15th Judicial Circuit Court, Palm Beach County, Case No. 50-2008-CA-028051 (D.E. 4); 9/11/08 Complaint, *E.W. v. Jeffrey Epstein*, 15th Judicial Circuit Court, Palm Beach County, Case No. 50-2008-CA-028058 (D.E. 4).)
13. Epstein does not admit or deny the truth of the allegations in the lawsuit brought by Edwards when he was a sole practitioner on behalf of his three clients (L.M., E.W. and Jane Doe). However, Epstein does not challenge Edwards' good faith when he filed the lawsuits against Epstein.
14. While an employee of RRA, Edwards was the lead attorney on the L.M., E.W. and Jane Doe cases against Epstein. (Edwards' 11/20/17 Depo. 78:3-6; 120:11-18.)
15. While an employee of RRA, Edwards was the sole employee of RRA who made strategic decisions on the L.M., E.W. and Jane Doe cases against Epstein. (Edwards' 11/20/17 Depo. 85:2-15.)
16. While an employee of RRA, Edwards did not represent any individuals other than L.M., E.W. and Jane Doe with regard to claims against Epstein. (Edwards' 3/23/10 Depo. 291:8; Edwards' 11/10/17 Depo. 77:1-7.)
17. On July 24, 2009, while Edwards was employed by RRA, a Complaint was filed on behalf of L.M. in the United States District Court for the Southern District of Florida. (7/24/09 Complaint, *L.M. v. Jeffrey Epstein*, United States District Court, Southern District of Florida, Case No. 09-CV-81092 (D.E. 1).)
18. L.M. already had a state court action pending against Epstein at the time the July 24, 2009, federal Complaint was filed which was based on the same facts and circumstances. (Edwards' 11/10/17 Depo. 316:11-20.)

19. Edwards never formally served Epstein with the federal Complaint that was filed on behalf of L.M. against Epstein. (Edwards' 5/15/13 Depo. 34:10-20.)
20. L.M.'s July 24, 2009, federal Complaint against Epstein alleged that Epstein forced her into "oral sex," yet L.M. testified that she never engaged in oral, anal or vaginal intercourse with Epstein and she never touched his genitalia. (Edwards' Answer to Complaint ¶ 42(j) (D.E. 19).)
21. While Edwards was employed by RRA he made the decision to take the deposition of three pilots who had flown, at different times, airplanes used by Epstein, and sought the deposition of a fourth pilot as part of the litigation against Epstein. (Edwards' Answer to Complaint ¶ 36 (D.E. 19).)
22. On August 24, 2009, L.M. noticed the depositions of Epstein's pilots Lawrence Paul Vioski, Jr., and David Hart Rogers. 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." (8/24/09 Notices of Deposition and Subpoena Duces Tecums, *L.M. v. Jeffrey Epstein*, 15th Judicial Circuit, Palm Beach County, Case No. 50-2008-CA-028051-XXXX-MB (D.E. 114, 115).)
23. In August 2009, while Edwards was employed by RRA, he noticed the deposition of Donald Trump in the *Jane Doe* litigation. (8/11/09 and 8/24/09, Re-Notices of Taking Videotaped Depositions, *Jane Doe v. Jeffrey Epstein*, United States District Court, Southern District of Florida, Case No. 08-80893.)
24. While Edwards was employed by RRA, he served Answers to Interrogatories on behalf of L.M. and E.W. indicating that he intended to call Bill Richardson, who was the governor of New Mexico at the time, as a trial witness as part of Edwards' clients' litigation against Epstein. (Edwards' Answer to Complaint ¶ 40 (D.E. 19).)
25. Edwards' three clients (L.M., E.W. and Jane Doe) never testified that they had sex with a celebrity, dignitary or international figure associated with Epstein. (Edwards' 11/10/17 Depo. 167:21-168:10.)
26. In August 2009, Edwards, on behalf of his client E.W., served a Request for Entry Upon Land seeking to inspect Epstein's entire home and property and to take videos

and photograph it. (8/10/09, Request for Entry Upon Land, *E.W. v. Jeffrey Epstein*, 15th Judicial Circuit, Palm Beach County, Case No. 50-2008-CA-028058-XXX-MB (D.E. 143).)

27. On August 20, 2009, the Court in the E.W. matter noted that E.W.'s request to inspect Epstein's entire home and property was withdrawn. (8/20/09, Order on Plaintiff's Request for Entry Upon Land, *E.W. v. Jeffrey Epstein*, 15th Judicial Circuit, Palm Beach County, Case No. 50-2008-CA-028058-XXX-MB (D.E. 151).)
28. In August and September 2009, Edwards, on behalf of his client L.M., served Notices of Production from Non-Parties evidencing his intent to obtain Epstein's medical records from Stephen Alexander, Bruce W. Markowitz and Charles J. Galecki. The Subpoenas sought, "[t]he complete medical file including MRIs, scans, X-rays and any other diagnostic test result, Intake Form, notes, reports, opinions, correspondence to or from third parties, correspondence to or from Jeffrey Epstein, referrals, medical bills, in short, your complete file." (8/19/09 and 9/11/09, Notice of Production from Non-Party, *L.M. v. Jeffrey Epstein*, 15th Judicial Circuit, Palm Beach County, Case No. 50-2008-CA-028051-XXXX-MB (D.E. 105, 127, 129).)
29. On August 14, 2009, Edwards, on behalf of his client L.M., served Notices of Production from Non-Parties evidencing his intent to obtain Epstein's prescription history from Lewis Pharmacy and Greens Pharmacy. The Subpoenas sought, "[a] complete computer printout of any and all prescriptions for medication, name and type of prescription, and all other documentation or information on or regarding Jeffrey Epstein." (8/14/09, Notice of Production from Non-Party, *L.M. v. Jeffrey Epstein*, 15th Judicial Circuit, Palm Beach County, Case No. 50-2008-CA-028051-XXXX-MB (D.E. 97, 100).)
30. On April 24, 2007, L.M., before she was a client of Edwards, provided a statement to the FBI.
31. In September 2009, while Edwards was employed by RRA, his client, L.M., testified at a deposition in her case against Epstein.
32. On June 19, 2009, Edwards, on behalf of his Jane Doe client, filed a Motion for Injunction Restraining Fraudulent Transfer of Assets, Appointment of a Receiver to Take Charge of Property of Epstein, and to Post a \$15 Million Bond to Secure

Potential Judgment. (6/19/09 Motion, *Jane Doe No. 2 v. Jeffrey Epstein*, United States District Court, Southern District of Florida, Case No. 08-CV-80119 (D.E. 165).)

33. In July 2010, Epstein settled the claims of Edwards' three clients (E.W., L.M. and Jane Doe). (Edwards' 11/10/17 Depo. 305:2-3.)
34. The Ponzi scheme through which Rothstein misrepresented claims and defrauded investors began in 2005 and ended in October 2009. (11/9/09 Verified Complaint for Forfeiture *In Rem* ¶ 13, *United States v. Real Properties Purchased by Scott Rothstein*, United States District Court, Southern District of Florida, Case No. 09-CV-61780 (D.E. 1).)
35. On November 20, 2009, certain investors of Rothstein's Ponzi scheme sued Rothstein in the Seventeenth Judicial Circuit Court, in and for Broward County, Florida. This lawsuit was part of the public record as of the date it was filed. (11/20/09 Complaint, *Razorback Funding, LLC, et al. v. Scott Rothstein, et al.*, 17th Judicial Circuit Court, Broward County, Florida, Case No. 062009CA062943AXXXCE.)
36. The United States government filed an Information against Rothstein on or about December 1, 2009. This criminal charge was public record as of the date it was filed. (12/1/09 Information, *United States of America v. Rothstein*, United States District Court, Southern District of Florida, Case No. 09-60331.)
37. On December 7, 2009, Epstein filed a civil Complaint in this action against Rothstein, Edwards and L.M. (12/7/09 Complaint, *Jeffrey Epstein v. Scott Rothstein, et al.*, 15th Judicial Circuit Court, Palm Beach County, Case No. 502009CA40800XXXMB (D.E. 5).)
38. On December 21, 2009, just 17 days after Epstein instituted the civil proceeding, Edwards filed a Counterclaim for abuse of process against Epstein. (12/21/09 Answer and Counterclaim, *Jeffrey Epstein v. Scott Rothstein, et al.*, 15th Judicial Circuit Court, Palm Beach County, Case No. 502009CA40800XXXMB (D.E. 19).)
39. Edwards represented L.M. in this litigation. (Edwards' 11/10/17 Depo. 255:5-11.)
40. Edwards did not charge L.M. for his representation of her in this litigation. (Edwards' 11/10/17 Depo. 255:12-19; 257:23-258:1.)

41. Edwards did not enter into any written representation agreement with L.M. concerning his representation of her in this litigation. (Edwards' 11/10/17 Depo. 255:20-256:8; 258:2-4.)
42. On January 21, 2010, a Default was entered against Rothstein in this litigation as to all claims in the December 7, 2009, Complaint against Rothstein. (1/21/10 Default, *Jeffrey Epstein v. Scott Rothstein, et al.*, 15th Judicial Circuit Court, Palm Beach County, Case No. 502009CA40800XXXMB (D.E. 27).)
43. In early August 2010, L.M. and Epstein entered into a Stipulation for Order of Dismissal With Prejudice as to L.M. Individually, Only. (8/5/10 Stipulation, *Jeffrey Epstein v. Scott Rothstein, et al.*, 15th Judicial Circuit Court, Palm Beach County, Case No. 502009CA40800XXXMB (D.E. 112).)
44. On August 9, 2010, the Court entered a Final Order of Dismissal With Prejudice as to L.M. Only approving L.M. and Epstein's Stipulation. (8/9/10 Final Order, *Jeffrey Epstein v. Scott Rothstein, et al.*, 15th Judicial Circuit Court, Palm Beach County, Case No. 502009CA40800XXXMB (D.E. 113).)
45. On January 5, 2011, Epstein moved to amend his Complaint, to eliminate certain paragraphs. (1/5/11 Plaintiff's Motion to Amend Complaint, *Jeffrey Epstein v. Scott Rothstein, et al.*, 15th Judicial Circuit Court, Palm Beach County, Case No. 502009CA40800XXXMB (D.E. 195).)
46. On April 12, 2011, Epstein filed an Amended Complaint against Rothstein and Edwards for abuse of process. (4/12/11 Amended Complaint, *Jeffrey Epstein v. Scott Rothstein, et al.*, 15th Judicial Circuit Court, Palm Beach County, Case No. 502009CA40800XXXMB (D.E. 303).)
47. On August 22, 2011, Epstein filed a Second Amended Complaint, which was corrected on August 24, 2011, bringing a claim for abuse of process against Edwards and for conspiracy to commit abuse of process against Rothstein. (8/22/11 Second Amended Complaint and 8/24/11 Notice of Scrivener's Error and Corrected Second Amended Complaint, *Jeffrey Epstein v. Scott Rothstein, et al.*, 15th Judicial Circuit Court, Palm Beach County, Case No. 502009CA40800XXXMB (D.E. 368, 370).)

48. On November 3, 2011, Edwards moved for Final Summary Judgment on Epstein's Second Amended Complaint. (11/3/11 Renewed Motion for Final Summary Judgment, *Jeffrey Epstein v. Scott Rothstein, et al.*, 15th Judicial Circuit Court, Palm Beach County, Case No. 502009CA40800XXXMB (D.E. 401).)
49. Edwards appeared in this action as his own co-counsel on March 27, 2012, before the suit against him was dismissed. (Edwards' 11/10/17 Depo. 257:7-22; 3/27/12 Notice of Appearance, *Jeffrey Epstein v. Scott Rothstein, et al.*, 15th Judicial Circuit Court, Palm Beach County, Case No. 502009CA40800XXXMB (D.E. 468).)
50. On July 26, 2012, the Court set the hearing on Edwards' Renewed Motion for Final Summary Judgment to be held on August 17, 2012. (7/26/12 Order on Edwards' Motion to Reschedule Hearing, *Jeffrey Epstein v. Scott Rothstein, et al.*, 15th Judicial Circuit Court, Palm Beach County, Case No. 502009CA40800XXXMB (D.E. 512).)
51. Epstein dismissed his claims without prejudice against Edwards on August 16, 2012. (8/16/12 Notice of Voluntary Dismissal, *Jeffrey Epstein v. Scott Rothstein, et al.*, 15th Judicial Circuit Court, Palm Beach County, Case No. 502009CA40800XXXMB (D.E. 519).)
52. Edwards' income as a lawyer has been collectively greater from January 2010 to the present than it was from 2002 when Edwards started practicing law through January 2010. (Edwards' 11/10/17 Depo. 47:10-14; 49:4-13.)
53. Edwards is not claiming a loss of income as a result of his reputation being injured by Epstein's filing and continuation of this lawsuit. (Edwards' 10/10/13 Depo. 239:21-22.)
54. Edwards has not seen a doctor or taken any medication as a result of the anxiety caused by this lawsuit. (Edwards' 5/15/13 Depo. 57:23-58:5; Edwards' 11/10/17 Depo. 112:11-20.)

C. Statement of Issues of Fact for Determination at Trial:

1. **Case Against Rothstein.** What, if any, damages were sustained by Epstein and proximately caused by Rothstein? (Edwards does not agree with this language for the reason that the issue as stated fails to tie causation to Rothstein's operation of the Ponzi scheme. It is Edwards' position that failure to limit the issue in this way as to Rothstein has the potential of confusing the jury in determining whether Epstein had any probable cause to claim damages against Edwards arising out of the same circumstances.)

2. **Malicious Prosecution Counterclaim.** The following are issues of fact for determination at trial on Edwards' Counterclaim against Epstein:

A. **Epstein's Position:** Whether, in December 2009, when Epstein instituted his civil proceeding against Edwards, the facts and circumstances known to Epstein were not sufficiently strong to support a reasonable belief that the proceeding against Edwards was supported by existing facts and, thus, Epstein did not have probable cause to institute his civil proceeding. (This issue is based on the Standard Jury Instruction, but Edwards disputes it is appropriate.)

Edwards' Alternate Position: Whether, in December 2009, when Epstein instituted his civil proceeding against Edwards, the facts and circumstances known to Epstein were insufficient to support a belief on the part of a reasonably cautious person that Edwards had engaged in conduct that supported Epstein's claims against Edwards. (Epstein disputes this issue because it does not follow the Standard Jury Instruction. The parties agree that, in the absence of material disputed facts, the issue of whether probable cause existed to support the institution of the civil proceeding brought by Epstein against Edwards is an issue of law to be determined by the Court.)

B. If Epstein had probable cause to initiate the original civil proceeding against Edwards at the time the case was initially filed, whether a reasonably cautious person would have continued to prosecute the civil proceeding

against Edwards, based on new information acquired by Epstein after the case was filed. (The parties agree that in the absence of material disputed facts, the issue of whether Epstein's claim against Edwards was maintained when probable cause no longer existed is an issue to be determined by the Court.)

- C. Epstein's Position: Whether Epstein instituted or continued his civil proceeding against Edwards maliciously and without probable cause for the primary purpose of injuring Edwards or recklessly and without regard for whether the proceeding was justified. (This issue is based on the Standard Jury Instruction, but Edwards disputes it is appropriate.)

Edwards' Alternate Position: Whether Epstein instituted or continued his civil proceeding against Edwards with legal and/or actual malice. (Epstein disputes this issue because it does not follow the Standard Jury Instruction.)

- D. Epstein's Position: Whether the continuation of the civil proceeding by Epstein against Edwards resulted directly and in natural and continuous sequence from Epstein's actions and, but for Epstein's actions, the proceeding would not have been continued. (Edwards disagrees that this is an issue and is of the position that, having conceded that Epstein is responsible for initiating the claim, and having waived any "advice of counsel" defense, it is impossible for Epstein to contend that responsibility for maintenance of the action up until the time of its voluntary dismissal is attributable to anyone but Epstein himself.)

- E. Whether Epstein's civil proceeding against Edwards was terminated in favor of Edwards. (Edwards contends this is a legal issue for determination by the Court.)

- F. Whether the institution or continuation of the civil proceeding by Epstein against Edwards was a substantial contributing cause of damage to Edwards and, but for the malicious institution or continuation of the proceeding, Edwards' damage would not have occurred.

- G. What amount of money, if any, will fairly and adequately compensate Edwards for his compensatory damages that resulted from Epstein's institution or continuation of the civil proceeding against Edwards.

- H. Whether Epstein was guilty of intentional misconduct, reckless disregard or gross negligence which was a substantial cause of Edwards' damages.
 - I. Whether punitive damages are warranted as punishment to Epstein for instituting or continuing his civil proceeding against Edwards and/or as a deterrent to others from filing a civil proceeding without probable cause.
 - J. Whether the claimed damage is a result of statements made after the institution of the civil proceeding and are thus protected by the litigation privilege, even if any such statements are found to be untrue. (This issue is based on the Standard Jury Instruction, but Edwards disputes it is appropriate because he believes Epstein's Amended Complaints are "statements made after the institution of the civil proceeding" and are afforded no protection by the litigation privilege.)
 - K. Bifurcated Proceeding: What amount, if any, should be assessed against Epstein for punitive damages as a punishment for instituting or continuing his civil proceeding against Edwards and/or as a deterrent to others.
- D. Exhibit Lists (with Objections): The parties do not waive their right to amend their Exhibit Lists and to identify additional objections for those exhibits that have not yet been disclosed and/or provided to correspond with the parties' respective Exhibit Lists.
- 1. Edwards' Exhibit List and Epstein's Objections are attached as **Composite Exhibit A**.
 - 2. Epstein's Exhibit List and Edwards' Objections are attached as **Composite Exhibit B**.
- E. Witness Lists: The parties do not waive their right to amend their Witness Lists.
- 1. Edwards' Witness List is attached as **Exhibit C**.
 - 2. Epstein's Witness List is attached as **Exhibit D**.
- F. Estimated Trial Time: Edwards estimates 10 trial days; Epstein estimates 15-20 trial days.

G. Names, Addresses, and Telephone Numbers of Attorneys to Try the Case:

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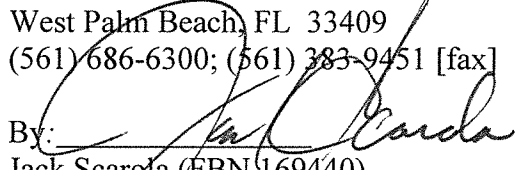
H. Number of Peremptory Challenges Per Party: Three.

I. Each Party's proposed jury instructions and verdict form, with citations to supporting authorities:

1. Edwards' proposed jury instructions and verdict form are attached as **Composite Exhibit E.**
2. Epstein's proposed jury instructions and verdict form are attached as **Composite Exhibit F.**

DATED: December 22, 2017.

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