

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
502009CA040800XXXXMBAG

NO.:

JUDGE: CROW

**PLAINTIFF/COUNTER-DEFENDANT JEFFREY EPSTEIN'S MOTION TO
OVERRULE OBJECTIONS AND COMPEL DEFENDANT/COUNTER-PLAINTIFF
BRADLEY EDWARDS TO ANSWER DEPOSITION QUESTIONS**

Plaintiff/Counter-Defendant Jeffrey Epstein (“Epstein”), by and through his undersigned counsel and pursuant to Rule 1.380(a) of the *Florida Rules of Civil Procedure*, hereby moves this Court for entry of an order directing Defendant/Counter-Plaintiff Bradley J. Edwards (“Edwards”) to respond to questions asked of him at his deposition taken on March 23, 2010, and again on May 15, 2013, and to such follow up questions as are appropriate. Mr. Edwards’s deposition is set for continuation on October 10, 2013. In support of this Motion, Epstein states:

INTRODUCTION

Edwards is suing Epstein for Abuse of Process and Malicious Prosecution. Edwards’s suit is premised upon Epstein’s filing of a lawsuit against Edwards and Scott Rothstein (“Rothstein”) after the implosion of their law firm, Rothstein Rosenfeldt Adler (“RRA”), which was at the core of the largest Ponzi scheme in Florida’s history. Edwards was a partner at RRA from April 2009 through November 2009, during which time Edwards was prosecuting three (3) cases against Epstein. These cases were undeniably used to defraud investors of several million dollars and fund the Ponzi scheme. RRA imploded, the Federal government shut them down and seized their files, and the Florida Bar commenced investigation into over half of the

attorneys at RRA.

In response to Epstein's original lawsuit, Edwards filed a Counterclaim, and after four (4) revisions, has stated two causes of action against Epstein: abuse of process and malicious prosecution. Edwards's Fourth Amended Counterclaim also includes an assertion to entitlement to punitive damages. Epstein has denied liability as to these claims and has asserted various affirmative defenses, which include Edwards's failure to state a cause of action in both abuse of process and malicious prosecution; Edwards's failure to properly plead his damages; Edwards's inability to overcome the absolute immunity afforded to Epstein under the litigation privilege; and Edwards's lack of damages. Conversely, Edwards has repeatedly asserted various defenses to his actions, including in a detailed affidavit upon which he relied in his Motion for Summary Judgment and purportedly intends to rely at trial. However, Edwards refuses to answer any questions regarding any of his asserted defenses or justifications for his actions.

On March 23, 2010, counsel for Epstein deposed Edwards (hereinafter "the first deposition"). During that examination, Edwards refused to answer numerous questions to which he, his counsel, or both, objected. Most of the objections asserted by Edwards's counsel were impermissibly verbose, suggestive objections that were often parroted by Edwards. In a continuation of that deposition (hereinafter "the second deposition"), which occurred on May 15, 2013, Edwards was again asked all of the questions to which he initially objected, and both he and his counsel asserted the same objections¹. As demonstrated more fully below, there is no basis in law for the objections asserted by Edwards, and many of the questions to which Edwards refused to respond go to the very heart of the assertions in his Counterclaim against Epstein. Edwards must, therefore, be compelled to respond, or alternatively not permitted to utilize any of

¹ Rather than asking each individual question and asserting each objection again, Edwards was asked if he would assert the same objections to the questions, and both he and his counsel answered affirmatively.

this information at trial.

MEMORANDUM OF LAW

Information supporting an allegation pled in a Complaint is the very definition of discoverable information under the Florida Rules of Civil Procedure. *See* FLA. R. CIV. P. 1.280(b). As such, many of the objections raised by Edwards in his depositions were legally impermissible, as were his counsel's narrative objections. "Testimony taken during a deposition is to be completely that of the deponent, not a version of the testimony which has been edited or glossed by the deponent's lawyer." *Quantrachrome Corp/age v. Micrometrics Instrument Corp.*, 189 F.R.D. 697, 701 (S.D. Fla. 1999). Rule 1.310(c) of the *Florida Rules of Civil Procedure* governs depositions upon oral examination and states, in relevant part:

Examination and cross-examination of witnesses may proceed as permitted at the trial....**Any objection during a deposition shall be stated concisely and in a nonargumentative and nonsuggestive manner. A party may instruct a deponent not to answer only when necessary to preserve a privilege, to enforce a limitation on evidence directed by the court, or to present a motion under subdivision (d). Otherwise, evidence objected to shall be taken subject to the objections.**

FLA. R.CIV. P.1.130(c) (2013) (emphasis added). Rule 1.310(d) permits a litigant to terminate an examination when a lawyer improperly uses speaking objections to prevent meaningful discovery. *Quinones v. State*, 766 So. 2d 1165, 1168 (Fla. 3d DCA 2000); *Owens-Corning Fiberglass Corp. v. Crane*, 683 So. 2d 552, 554 (Fla. 3d DCA 1996)

Additionally, The Trial Lawyers Section of The Florida Bar promulgated a manual styled "Guidelines for Professional Conduct," which provides:

Counsel defending a deposition should limit objections to those that are well-founded and permitted by the rules of civil procedure or applicable case law. Counsel should bear in mind that most objections are preserved and need be interposed only when the form of a question is defective or privileged information is sought. When objecting to the form of a question, counsel should simply state: "I object to the form of the question." The grounds should not be stated unless

asked for by the examining attorney. When the grounds are then stated they should be stated succinctly and only what is necessary to state the grounds should be stated. **While a question is pending, counsel should not, through objections or otherwise, coach the deponent or suggest answers. Should any lawyer do so, the courts are urged to take stern action to put a stop to such practices and to serve as a deterrent to others.** Counsel for all parties should refrain from self-serving speeches during depositions.

The Florida Bar Trial Lawyers Section, “Guidelines for Professional Conduct,” § E, Paragraphs 8, 9, and 11 (emphasis added). During the course of Edwards’s two depositions, Edwards and/or his counsel asserted more than one hundred fifty-four (154) objections. In total, Edwards objected approximately sixty-five (65) times based on attorney-client privilege; approximately seventy (70) times based on work product privilege; approximately eight times (8) based on economic privacy privilege; approximately six (6) times based on relevance; one (1) time based on facts not in evidence; one (1) time based on a hypothetical question; two (2) times based on no proper predicate; one (1) time based on not reasonably calculated to lead to the discovery of admissible evidence; and one (1) time based on an unspecified, generic privilege.² More than a quarter of these objections were speaking objections by Edwards’s counsel that went beyond the scope of what is permitted in a deposition by the *Florida Rules of Civil Procedure* and relevant case law. Epstein is not seeking responses to all of these questions to which there was an improper objection; he only asks this Court to compel responses to those listed below.

As this analysis demonstrates, Edwards neither complied with the spirit of Rule 1.130(c) of the *Florida Rules of Civil Procedure* nor the case law applicable to this issue. Irrefutably,

² This analysis does not take into account the fact that Edwards reasserted each and every objection asserted during the first deposition when so asked during the second deposition: to wit: When asked by counsel for Epstein: “As you said you would not answer any of the questions that were propounded to you before and objected to.” Edwards responded: “My objection to those previous questions would be my objection today.” *Deposition of Edwards dated 2013*, page 98, lines 8-12.

the minimal testimony provided was either an edited version of Edwards's counsel's speaking "objection" or an improper instruction from counsel that Edwards not answer the pending question. *Smith v. Gardy*, 569 So. 2d 504, 507 (Fla. 4th DCA 1990) (stating that the witness "indeed should have answered, and the arrogance of the defense attorney in instructing the witness not to answer is without legal justification. Nowhere in the Florida Rules of Civil Procedure is there a provision that states that an attorney may instruct a witness not to answer a question.").

Edwards has impermissibly hidden behind unavailing privileges and objections, some of which are not even recognized as proper under Florida law, in an effort to thwart Epstein's attempts to gather the facts; facts that were placed at issue by Edwards in his Counterclaim, and are necessary to prepare for trial. As such, Edwards's objections must be overruled, Edwards must be compelled to provide answers for these questions, and counsel for Edwards must be instructed to limit his interruptions and testimony.³

THE DEPOSITION QUESTIONS AND OBJECTIONS ON GROUNDS OF ATTORNEY-CLIENT PRIVILEGE AND WORK PRODUCT PRIVILEGE

Delineated below is each instance in which Edwards purports to impermissibly assert the attorney-client privilege, the work-product privilege, or both, to questions that are not only relevant to Edwards's claim and Epstein's defense, but also germane to topics Edwards himself injected into this case. *See Edwards's Fourth Amended Counterclaim; Affidavit of Bradley Edwards dated April 23, 2010; Affidavit of Bradley Edwards dated September 21, 2010*. As

³ It is significant to note that other jurisdictions have sanctioned counsel for just this behavior during deposition. *See e.g. Van Pilsum v. Iowa State University of Science and Technology*, 152 F.R.D. 179 (S.D. Iowa 1993) ("The style adopted by [deponent's counsel]...will not be tolerated by this court. Merely because depositions do not take place in the presence of a judge does not mean lawyers can forget their responsibilities as officers of the court. They should conduct themselves accordingly."). The court in *Van Pilsum* ordered deponent's counsel to pay half the cost of the deposition, ordered the deposition rescheduled and barred deponent's counsel from excessive interruptions.

demonstrated more fully below, Edwards cannot repeatedly assert in his pleadings his defense of each and every action he took in the Epstein Cases with his allegations and then refuse to answer questions regarding his alleged defense of these actions.

In the first instance, the subject matter of the deposition turned to the investigation into Epstein that was conducted by RRA at Edwards's direction:

Q: In this particular instance associated with Mr. Epstein, what investigators worked on Mr. Epstein's case during the time you were at RRA? *Transcript of Deposition dated March 23, 2010* at page 169; line 19-21.

A: If you want an exclusive list, I don't know. *Id.* at page 169; line 22.

Q: Did you direct Mr. Fisten to do investigations in California? *Id.* at page 170; line 8-9.

A: I directed Mr. Fisten to interview people and ultimately it was learned that they lived in California. *Id.* at page 170; line 10-11.

Q: And did Mr. Fisten go to California to interview those individuals? *Id.* at page 170; line 12-13.

A: To the best of my knowledge he did. *Id.* at page 170; line 14.

Q: Okay. And who did he go interview? *Id.* at page 170; line 15.

MR. SCAROLA: That is work product and I instruct you not to answer. *Id.* at page 170; line 16-17.

The witness did not answer.

Q: Did Mr. Fisten interview an individual by the name of Michael Friedman? *Id.* at page 170; line 23-25.

MR. SCAROLA: this is work-product and I instruct you not to answer... except to the extent as may have already been disclosed to the defense in any of the three cases that are currently pending. Any and all questions about investigative work will meet with the same objection and same instruction. *Id.* at page 172; line 1-9.

Next, the topic of the examination turned to the expenses incurred in the investigation of these cases both before Edwards joined RRA and after:

Q: Who was the first investigator that you believe was involved in investigating the Epstein cases? Just a name not topic? *Id.* at page 179; line 12-14.

MR. SCAROLA: Work-product, instruct you not to answer. *Id.* at page 179; line 15-16.

The witness did not answer.

The discussion continues:

Q: Who other than Mr. Fisten from an investigator, from an internal investigator at RRA employee worked on doing investigation on the Epstein files? *Transcript of Deposition dated March 23, 2010*, page 181; line 19-23.

MR. SCAROLA: Same objection, same instruction. *Id.* at page 181; line 24-52.

Q: You are claiming work-product? *Id.* at page 182; line 1-2.

MR. SCAROLA: Yes. *Id.* at page 182; line 3.

Q: Did you ever direct your investigators to go through Mr. Epstein's trash⁴? *Id.* at page 184; line 22-23.

MR. SCAROLA: I am going to object, work-product, attorney-client privilege. *Id.* at page 184; line 24-25.

Q: Have you directed, did you ever direct – that is the investigators during the time you were at RRA and that's the question you're claiming the privilege over, correct? *Id.* at page 185; line 2-5.

MR. SCAROLA: I am claiming the privilege with respect to any action that was taken by Mr. Edwards or at Mr. Edwards' direction in ... connection with the investigation in prosecution of the claims against Mr. Epstein. *Id.* at page 185; line 6-13.

Q: Let me make my question clear, Mr. Edwards. With regard to your investigators, you gave direction with regarding the Epstein cases, during the time you were with RRA did you ever tell them or direct them to go through Mr. Epstein's trash? *Id.* at page 185; line 15-20.

MR. SCAROLA: Same objection, same instruction. *Id.* at page 185; line 21-22.

Q: Did you ever direct the investigators to go through the trash of the lawyers who were representing Mr. Epstein, including myself? *Id.* at page 185-86; line 24-1.

MR. SCAROLA: Same objection, same instruction. *Id.* at page 186; line 2-3.

MR. SCAROLA: Mr. Edwards will not answer any questions regarding what he did or didn't do. *Id.* at page 186; line 6-8.

Q: Did you ever direct the investigators to, during the time you were at RRA, to conduct a surveillance on Mr. Epstein's property? *Id.* at page 186; line 19-22.

MR. SCAROLA: Same objection, same instruction. *Id.* at page 186; line 23-24.

Q: Since the time you have left RRA in your current firm, have you conducted surveillance on Mr. Epstein's property? *Id.* at page 187; line 2-4.

MR. SCAROLA: Same objection, same instruction. *Id.* at page 187; line 5-6.

Q: Have you instructed anyone, either of the in-house investigators to conduct surveillance of Mr. Epstein's property? *Id.* at page 187; line 8-10.

MR. SCAROLA: Same objection, same instruction. *Id.* at page 187; line 11-12.

Q: Have you authorized investigators employed by RRA, either employees of the firm or an outside investigation firm, to walk around the perimeter of Mr. Epstein's home on or about March 17th of 2010? *Id.* at page 187; line 14-17.

MR. SCAROLA: Same objection, same instruction. *Id.* at page 187; line 18-19.

⁴ Interestingly, Edwards asks Epstein this question in his deposition, and lists items found from searching through Epstein's trash as evidence he intends to use at trial.

Q: Let me ask you this: Were any informants, did you authorize your investigators to hire informant, informants? *Id.* at page 192; line 12-14.

MR. SCAROLA: Same objection, same instruction. *Id.* at page 192; line 15-16.

Q: Did you authorize your investigators to do electronic eve's dropping? *Id.* at page 192; line 18-19.

MR. SCAROLA: Same objection, same instruction. *Id.* at page 192; line 20-21.

Q: Did you ever authorize any investigators to enter Mr. property (sic), Mr. Epstein's property on March 17th, 2010? *Transcript of Deposition dated March 23, 2010*, page 198; line 11-13.

MR. SCAROLA: Objection. Instruct you not to answer on the basis of work-product privilege. *Id.* at page 198; line 14-16

Q: Let me just be clear. Are, are you aware of any investigators who entered Mr. Epstein's property on March 17th, 2010? *Id.* at page 198; lines 18-20.

MR. SCAROLA: Same objection as well as attorney-client privilege and instruct you not to answer. *Id.* at page 198; lines 21-23.

Q: Mr. Edwards, did you authorize any investigators to trespass on Mr. Epstein's property on March 17th of 2010? *Id.* at page 198-99; lines 25-2.

MR. SCAROLA: Same objection and instruction. *Id.* at page 199; line 3-5,

Q: Mr. Edwards, did you authorize investigators to hide in the bushes at Mr. Epstein's house in order to take photographs of either Mr. Epstein or any associated objects on his property? *Id.* at page 199; line 6-10.

MR. SCAROLA: Same objection, same instruction. *Id.* at page 199; line 11-12.

The subject matter of the examination turned to other investigators:

Q: Did he [Mr. Roberts] ever perform investigation work on any of the Epstein files? *Transcript of Deposition dated March 23, 2010*, page 200; line 7-8.

MR. SCAROLA: Same objection, same instruction. *Id.* at page 200; line 14-15.

Q: Did Rich [Fandrey], did Rick perform any investigation on the Epstein, did you authorize Rick to perform any investigation on the Epstein files? *Id.* at page 200; line 22-23.

MR. SCAROLA: Same objection, same instruction. *Id.* at page 200-01; line 25-1.[Objection. Instruct you not to answer on the basis of work-product privilege. PAGE 198 line 14-16; and Same objection as well as attorney-client privilege and instruct you not to answer. 198/21-23]

Q: Did you ever authorize or direct Mr. Jenne to perform any investigation on the Epstein files? *Id.* at page 201; line 4-6.

MR. SCAROLA: Same objection, same instruction. *Id.* at page 201; line 7-9.

Q: If you're unaware of the existence of the entity called Blue Line Research and Development, LLC, would it be a correct statement that you have never authorized anyone from Blue Line Research and Development, LLC, to conduct any investigation of Jeffrey Epstein? *Id.* at page 201; line19-24.

MR. SCAROLA: Same objection, same instruction. *Id.* at page 201-02; line 25-1.

Q: Says he doesn't know them. How can that be an instruction? *Id.* at page 202;

line 2-3.

MR. SCAROLA: Well, because I am not going to tell you, we're not going to answer any questions about either what he did or what he didn't do that are part of the work product involved in his representation of the Plaintiffs with claims against Mr. Epstein whom Mr. Edwards is representing. *Id.* at page 202; line 4-11.

MR. SCAROLA: So, in light of that and what I have attempted to make very clear with regard to the scope of our objections, If you continue to ask questions which it is clear fall within the scope of my instructions to Mr. Edwards and my announced intention with regard to the scope of those instructions, then we will terminate this deposition so that I can seek a protective order. My suggestion is that you move onto other areas that are outside the scope of that instruction if you have any other questions outside the scope. *Id.* at page 202; line 131-25. Q: Let me be clear with you with regard to any, for purposes of following, asking any follow-up questions should the court determine that I am entitled to this information, you would agree that should the court determine I am entitled to ask the name of these individuals and possibly other questions is, is that by not asking questions I am in no way waiving my right to ask as many questions as the court ultimately determines as appropriate, proper and as the court allows, correct? *Id.* at page 203; line 4-15.

MR. SCAROLA: I absolutely agree. *Id.* at page 203; line 16.

The subject matter of the examination then turned to Mr. Edwards's purported interactions with anyone associated with Epstein case:

Q: During the time that you were with RRA, excuse me, and had investigation done on Mr. Epstein, was any of your investigation that you had performed turned over to any person outside of RRA or your clients? *Id.* at page 224; line 13-17.

MR. SCAROLA: Same objection, same instruction to the extent that that would encompass other attorneys with a shared interest in the prosecution of Mr. Epstein. If any of those materials were turned over to persons who did not have a direct interest to lawyers who did not have a direct interest in the prosecution of the claims against Mr. Epstein or to clients who did not have, to persons who did not have a direct interest in the pursuit of their claims against Mr. Epstein, then you can answer to that extent. *Id.* at page 224-25; line 18-5.

A: Privileged. *Id.* at page 225; line 6.

Q: In any of the directions that you ever gave to the investigators, did you ever put that in the form of a memo; that is, would you give them written directions? *Id.* at page 227; line 15-18.

MR. SCAROLA: Same objection, same instruction. *Id.* at page 227; line 19-20.

After objecting to all the questions about investigators and their investigations on page 228 lines 1 though 13, Edwards admits that he received written and oral reports from investigators – before he answers though, he asks Scarola if he should answer and Scarola says “yeah.” *Id.* at 229.

The discussion turns to the manner in which the cases were handled while Edwards was a partner at RRA:

Q: The one meeting that you had in Mr., Mr. Rothstein's office with Russell Adler and some unknown person on the phone, were you given any direction at that time that certain discovery should be done or certain tactics should be used with regard to prosecuting the Epstein cases? *Transcript of Deposition dated March 23, 2010*, page 23; line 16-21.

MR. SCAROLA: Same objection, same instruction. *Id.* at page 234; line 22-23.

Q: And what did, what did, what information did Mr. Rothstein send you that involved Mr. Epstein? *Transcript of Deposition dated March 23, 2010*, page 235; line 17-19.

MR. SCAROLA: Same objection, same instruction. *Id.* at page 235; line 20-21.

Q: At the meetings that you, at the meetings that occurred where these various lawyers, Berger, Adler, Stone, Rob Buschel were present and Epstein was discussed, was the discovery that, discovery and/or investigation regarding Mr. Epstein was that ever discussed? *Transcript of Deposition dated March 23, 2010*, page 236; line 8-13.

MR. SCAROLA: Same objection, same instruction. *Id.* at page 236; line 24-25.

The subject matter of the examination then focused on the events surrounding the prosecution of the Epstein cases in 2009; the crux of Epstein's litigation against Edwards:

Q: In setting these depositions; that is, in requesting these deposition be taken sometime in June and July of 2009 or requesting dates for them, did you have discussions with other attorneys in your firm as to the benefits that would exist in your case, your three cases against Mr. Epstein by taking these individuals' depositions? *Transcript of Deposition dated March 23, 2010*, page 283; line 10-17.

MR. SCAROLA: Objection Same as grounds previously stated; instruct you not to answer. *Id.* at page 283; line 18-20.

Q: Mr. Edwards, were you involved in the discussions regarding the deposing of any of the people of these individuals, Mr. Trump; that is, in discussions with any other lawyers in your firm including Scott Rothstein? *Id.* at page 283; line 21-25.

MR. SCAROLA: Same objection, same instruction. *Id.* at page 284; line 1-2.

Q: Did you ever discuss with Mr. Rothstein or anyone on his behalf the value of taking the depositions of Trump, Dershowitz, former president Clinton, David Copperfield, and Leslie Wexner as an inducement to get Mr. Epstein to settle his lawsuits? *Transcript of Deposition dated March 23, 2010*, page 284; line 18-23.

MR. SCAROLA: Beyond what he has already responded, we would object on the basis of work-product and attorney-client privilege and I instruct you not to answer. *Id.* at page 285; line 8-11.

A: okay. *Id.* at page 285; line 13

Q: Did you have any discussions within your firm with regard to taking the

deposition of celebrities or famous people who were on, purportedly on Mr. Epstein's planes so that they could be deposed such that would be an inducement to Mr. Epstein to settle his lawsuit? *Id.* at page 286; line 12-17

MR. SCAROLA: Same objection, same instruction. *Id.* at page 286; line 18-19.

Q: Isn't it true, Mr. Edwards, that in taking the deposition or in attempting to take the deposition of Donald Trump, you had no information that Mr. Trump had any knowledge of any female having; that is, underage female ever having been on Mr. Epstein's plane and been, and having been assaulted by him? *Id.* at page 286-87; line 21-2.

MR. SCAROLA: What Mr. Edwards knew or didn't know in connection with this prosecution of pending claims is protected by a privilege. I instruct him not to answer. *Id.* at page 287; line 3-6.

Counsel for Epstein then discusses Ken Jenne, the convicted felon and former Sheriff who, according to Edwards's own privilege log, worked extensively on the Epstein cases:

Q: Did Mr. Jenne, did you ever direct Mr. Jenne to do any investigation on the Epstein cases? *Transcript of Deposition dated March 23, 2010*, at page 298; line 17-19.

MR. SCAROLA: Objection, work-product. *Id.* at page 298; line 20.

Q: Did Mr. Jenne ever do any investigation on the Epstein files? *Id.* at page 289; line 22-23.

MR. SCAROLA: Objection, work-product. *Id.* at page 298; line 24-25.

Q: At any time have you been given access to the pamphlet book and/or any of the yellow pages that have been referenced in the criminal indictment? *Transcript of Deposition dated March 23, 2010*, page 304; line 14-17

MR. SCAROLA: I am going to instruct you not answer that question on the basis of attorney-client and work-product privilege. *Id.* at page 304; line 18-20.

Q: Have you had any communication, not a conversation but any communication with the criminal defense lawyer about obtaining a copy of the pamphlet and/or the pamphlet book or the yellow pages that are referenced in the criminal indictment that were at one time in the possession of Mr. Rodriguez and that he apparently was trying to sell to the cooperating witness? *Id.* at page 305; line 3-10. MR. SCAROLA: I am going to instruct you not to answer any question about anything that you may have done in connection with the fulfillment of your responsibilities as counsel for the Plaintiffs in the three pending cases. *Id.* at page 305; line 11-15.

A: On what I have done or what I have not done, all of that is work-product. *Id.* at page 305; line 19-20.

At his second deposition, Edwards was asked the following:

Q: Did you contact – did you have any contact with any persons who were listed in the book that was eventually produced by Mr. Rodriguez after he got arrested

and the book was made public? *Transcript of Deposition dated May 15, 2013* ("second deposition"), page 88; line 17-20.

MR. KING: Let me object. I don't see the relevancy, immaterial. *Id.* at page 88; line 21-22.

MR. KING: Well, along the lines that were taken last time with regard to whatever work product was involved in the investigation of his cases, in light of the current status of the case, in which the – you know, pending claim is what it is....I think it's – it's even more reinforced by those objections are and were raised. *Id.* at page 90; line 8-16.

Q: The reason I'm asking the question is, did you initiate or attempt to initiate any new lawsuits based upon what you learned in there? *Id.* at page 90; line 20-22.

MR. KING: The same objection. Instruct him not to answer. *Id.* at page 90; line 23-24.

Q: That's not going into work product, it's... *Id.* at page 90-91; line 25-1.

MR. KING: No, it is. *Id.* at page 91; line 2.

MR. KING: It goes to his mental process. *Id.* at page 91; line 5.

Q: Did you ever have any contact with Kendall Coffey regarding the propriety or ask him for an opinion of the propriety of taking that book from Mr. Rodriguez? *Id.* at page 95; line 1-4.

MR. KING: The same objections, work product. *Id.* at page 95; line 5.

A: And attorney-client privilege. *Id.* at page 95; line 8.

MR. KING: And Government privilege. *Id.* at page 95; line 9.

In the second deposition, Edwards was asked the following questions with respect to the objections asserted in his first deposition:

Q: If I were to ask you each of those questions. *Transcript of Deposition dated May 15, 2013*, page 88; lines 1-2

A: The same objection. *Id.* at line 3.

Q: -- they would be the same objections, your counsel would make the same objections, that way I don't have to redo for two and a half hours. *Id.* at page 88; lines 1-2

MR. KING: That's correct. *Id.* at page 88; line 7.

Q: As you said you would not answer any of the questions that were propounded to you before and objected to. *Id.* at page 98; lines 8-10.

A: My objection to those previous questions would be my objection today. *Id.* at page 98; lines 11-12.

Q: All right. It was set for a hearing April 12, 2011 and then again reset for another time and no one ever went – the hearing never went forward, so those questions are still objected to, unresolved. So, we'll stopageWe will go from there, see what happens. *Id.* at page 98; lines 13-18.

MR. GOLDBERGER: Well, wait a minute. Just one thing... So if we had asked the same questions, he would have raised the same objections, so not only are we going to raise the previous objections, we are going to raise them as if they were

made again today. *Id.* at page 98, line 20 - page 99, line 1.

A: I want to make a clean record too. If you had asked the same questions, I would have asserted at least the same objections. *Id.* at page 99; lines 3-5

MS. HADDAD COLEMAN: Everybody understands this deposition will be continued after the Court rules on everything. *Id.* at page 99; lines 24-25

A: Everybody understand the Court is going to rule on things and order me back to a deposition or not order me back to a deposition, whatever the Court's going to do. *Id.* at page 100; lines 2-5.

MR. KING: From our – from our perspective, you understand we were not producing records here today, the financial records, because we were asserting the financial privacy privilege? *Id.* at page 100; lines 15-18.

MR. KING: So I gather that would have put you in a position where you would not have been able to, nor would you have proceeded with questions today. *Id.* at page 100; lines 20-23.

MR. HADDAD: We wouldn't even – no, as long as it's pending before the Court, I saw no purpose in having to reestablish that you were objecting. *Id.* at page 100; line 24- page 101; line 2.

As set forth in detail below, neither the attorney-client privilege nor the work product privilege is applicable to most of these speaking and argumentative objections made by counsel, and Edwards should be compelled to answer the questions/portions of the questions that are not protected thereby. The specific areas of questioning delineated above undeniably sought to elicit discoverable and relevant information pertaining to Edwards's allegations against Epstein in this lawsuit and Epstein's defense thereof, establishing both the impropriety of counsel for Edwards's objections and the necessity that Edwards respond to the questions.

ATTORNEY-CLIENT PRIVILEGE

In Florida, the attorney-client privilege renders confidential "a communication between a lawyer and client...if it is not intended to be disclosed to third persons other than: (1) Those to whom disclosure is in furtherance of the rendition of legal services to the client; and (2) Those reasonably necessary for the transmission of the communication." § 90.502 FLA. STAT. (2013).

The subject matter of the protected communication "must relate to the subject matter of the attorney's employment." *Gold Coast Raceway v. Ehrenfeld*, 392 So.2d 1002, 1002 (Fla. 4th DCA 1981) (citations omitted). It is important to note that attorney-client privilege "for

confidential communications does not encompass work product.” *City of Williston v. Roadlander*, 425 So.2d 1175, 1177 (Fla. 1st DCA 1983). The privilege is waived once the information is divulged by a third party. *Id.*

Additionally, the attorney-client privilege is waived when a party injects into a case an issue that requires an examination of otherwise privileged communications. *Choice Restaurant Acquisition Ltd. V. Whitley, Inc.*, 816 So. 2d 1165 (Fla. 4th DCA 2002). When a party places information protected by the attorney-client privilege in issue through some affirmative act for his own benefit, the privilege will not be allowed to protect against disclosure of such information. *In re Campbell*, 248 B.R. 435 (M.D. Fla. 2000). Here, Edwards has made these underlying cases in which he represented these plaintiffs against Epstein the central issue of his current case against Epstein. First, with respect to any and all questions related to the investigators and investigation tactics utilized by Edwards, the topic of the investigator’s conduct is directly related to Epstein’s initial allegations in his suit against Edwards regarding the outrageous discovery tactics utilized by Edwards and RRA. *See Fourth Amended Counterclaim and Answer and Affirmative Defenses to Fourth Amended Counterclaim*. Furthermore, Edwards has listed these investigators as witnesses in this case. *See Edwards’s Responses to Discovery*. As such, Edwards has waived the privilege regarding this line of questioning.

Likewise, waiver in one proceeding is waiver in all proceedings. The attorney-client privilege may not be selectively waived by disclosing privileged information to one agency or party, without waiving it in respect to another agency or party in another proceeding. *See Walker v. River City Logistics Inc.*, 14 So. 3d 1122 (Fla. 1st DCA 2009) (Employer/carrier’s voluntary disclosure of documents to the Claimant’s public defender in another proceeding waived the

privileged nature of the documents.); *S & I Investments v. Payless Flea Market, Inc.*, 10 So. 3d 699, 702–03 (Fla. 4th DCA 2009). Here, Edwards has undeniably waived privilege regarding these matters by sharing the information with the federal government, the press, and in other litigation. *See Paragraphs 8 and 24 of Edwards’s Fourth Amended Counterclaim; See pleadings in Doe v. United States of America 08-cv-80736-KAM; Correspondence between Edwards and members of the press; Privilege Log of Farmer, Jaffe, Weissing, Edwards, Fistos & Lehrman, Dated February 23, 2011 as filed in this matter and in In re: Rothstein Rosenfeldt Adler, P.A.; 09-34791-RBR.*

Additionally, many of the questions for which Edwards asserted attorney-client privilege do not fall into this narrow definition of protected communications. In fact, many questions required merely a “yes or no” answer, and as phrased were not suggestive of the attorney-client privilege or work product privilege asserted by Edwards. Accordingly, Edwards should be compelled to answer these questions.

WORK-PRODUCT DOCTRINE

Attorney-client privilege and work product doctrine are not the same: Confidentiality of work product is based on public policy considerations, and is not strictly within the ambit of the attorney-client privilege. *City of Williston v. Roadlander*, 425 So. 2d 1175, 1177 (Fla. 1st DCA 1983) (citations omitted). The work-product doctrine is outlined in Rule 1.280(b)(4) of the *Florida Rules of Civil Procedure*, which provides that:

a party may obtain discovery of documents and tangible things otherwise discoverable under subdivision (b)(1) of this rule and prepared in anticipation of litigation or for trial by or for another party or by or for that party’s representative, including that party’s attorney, consultant, surety, indemnitor, insurer, or agent, only upon **a showing that the party seeking discovery has need of the materials in the preparation of the case and is unable without undue hardship to obtain the substantial equivalent of the materials by**

other means.

FLA. R.CIV. P.1.280(b)(4) (2013) (emphasis added). *See also Genovese v. Provident Life*, 74 So. 3d 1064, 1067 (Fla. 2011) (explaining the distinction between work product privilege and attorney-client privilege. Accordingly, unlike attorney-client privilege, which is completely immune from disclosure, work product is not absolutely protected, as there is a “good cause” exception. FLA.R.CIV. P. 1.280 (2013).

Further, it is well-established that a Plaintiff cannot assert work product privilege to avoid answering questions regarding his own allegations in his complaint, even if the information requested through questioning implicitly reveals his legal theory of his case. *See Dunkin Donuts Inc. v. Mary's Donuts, Inc.*, 206 F.R.D. 518 (S.D. Fla. 2002) (work product privilege may not be asserted by deponent to avoid providing information supporting contentions in plaintiffs complaint). “The rationale supporting the work product doctrine is that ‘one party is not entitled to prepare his case thorough the investigative work product of his adversary where the same or similar information is available through ordinary investigative techniques and discovery procedures.’” *Southern Bell Tel. & Tel. Co. v. Deason*, 632 So. 2d 1377, 1384 (Fla. 1994). Here, the information sought by Epstein from Edwards in deposition is *not* “available through ordinary investigative techniques and discovery procedures.” Here, events surrounding the prosecution of the Epstein cases in 2009 are the crux of the litigation Epstein filed against Edwards. Edwards has, undeniably, already waived the right to claim work product as to this information. *Edwards's Fourth Amended Counterclaim; Affidavit of Bradley Edwards dated April 23, 2010; Affidavit of Bradley Edwards dated September 21, 2010.*

Additionally, the information sought through the above-cited questions for which Edwards asserted work-product privilege in his deposition is crucial for both Edwards's

prosecution of his case and Epstein's defense of this case, as it goes to the crux of Edwards's causes of action against him. As such, the information requested is not outside the scope of discovery. *See Edwards's Fourth Amended Counterclaim; Epstein's Answer and Affirmative Defenses to Fourth Amended Counterclaim; Affidavit of Bradley Edwards dated April 23, 2010; Affidavit of Bradley Edwards dated September 21, 2010.*

NO PROPER PREDICATE

The subject matter of the examination turned to Edwards's compensation while at RRA and the payment of the expenses incurred in the litigation of the Epstein cases while at RRA:

Q: Did you do any hourly billing yourself at all or were you strictly a contingency fee person? *Transcript of Deposition dated March 23, 2010* at page 169; lines 15-16.

A: 90 percent contingency. *Id.* at page 196; line 17.

Q: Where did you, where did you think that [the expenses incurred in the Epstein cases] money was coming from; that is the source of the money to pay the extensive bills that were being incurred on Epstein and other cases? *Id.* at page 196-97; lines 24-2.

MR. SCAROLA: I am going to object to the extent the question calls – excuse me, I'm going to object because there is no proper predicate to the question, and that is that it was a matter that was ever given a thought by Mr. Edwards. *Id.* at page 197; lines 3-8.

Q: What did you consider, what did you believe was the cost; that is, the source of the money that was being used to be paying these extensive costs that were being incurred in Epstein and other cases? *Id.* at page 197; lines 14-18.

MR. SCAROLA: Objection, form and compound. *Id.* at page 197; lines 22-23.

A: The law firm. *Id.* at page 197; line 25.

In *Weyant v. Rawlings*, 389 So. 2d 710 (Fla. DCA 1980), the court held that “[f]ailure to lay a proper predicate was not a sufficient basis upon which to deny petitioner's motion to compel, even if such an objection had not been waived. Rule 1.280(b)(1) specifically states that discovery is not subject to objection on the ground that the subject matter of the discovery will not be admissible at trial, provided the matter to be discovered appears reasonably calculated to lead to the discovery of admissible evidence.” *Id.* at 711. Here, Edwards has already admitted

that the expenditures in investigation of the Epstein cases while at RRA was between \$300,000.00 and \$500,000.00. *See Deposition of Bradley Edwards.* Additionally, the discovery tactics while the cases were prosecuted by RRA is the crux of this litigation. *See Edwards's Fourth Amended Counterclaim; Affidavit of Bradley Edwards dated April 23, 2010; Affidavit of Bradley Edwards dated September 21, 2010; Epstein's Answer and Affirmative Defenses.* Accordingly, Edwards must be compelled to respond to questioning regarding this issue.

FINANCIAL PRIVACY

“While the general rule in Florida is that personal financial information is ordinarily discoverable only in aid of execution after judgment has been entered, **where materials sought by a party ‘would appear to be relevant to the subject matter of the pending action,’ the information is fully discoverable.**” *Friedman v. Heart Institute of Port St. Lucie, Inc.*, 863 So.2d 189, 194 (Fla. 2003)(citing to *Epstein v. Epstein*, 519 So. 2d 1042, 1043 (Fla. 3d DCA 1988)) (emphasis added). Since Edwards has put finances related to the Epstein cases at issue, he must provide the answers to the below-requested information to prove this claim. Moreover, questions surrounding Edwards’s employment at RRA, including what enticed him to become a partner at RRA, are directly related to this case; especially in light of the funds expended on prosecuting the Epstein cases while at RRA. Edwards was asked the following regarding that issue:

Q: Did [Rothstein] ask you how much you were making at that time or how much you had made in the preceding year, '08? *Transcript of Deposition dated March 23, 2010* at page 72; line 10 – 12.

A: I believe so. *Id.* at page 72; line 13.

Q: What did you tell him? *Id.* at page 72; line 14

MR. SCAROLA: Objection, Instruct you not to answer on the basis of economic privacy. *Id.* at page 72; lines 15-16.

Q: What did you tell him that you expected? *Id.* at page 73; line 2.

MR. SCAROLA: Objection, economic privacy. *Id.* at page 73; line 3.

Q: All I am interested now, not necessarily what you were earning but what you told him, i.e., Mr. Rothstein that you wanted to get or expect to earn if you considered a job at RRA. *Id.* at page 73; lines 5-8.

MR.SCAROLA: Objection, economic privacy, instruct you not to answer. It's neither relevant nor material nor reasonably likely to lead to relevant material information and invades the economic privacy of the witness. *Id.* at page 73; lines 9 – 14.

Q: And was the number that you gave him more than you had earned for the year 2008 or less? *Id.* at page 73; line 20.

MR.SCAROLA: Same objection. *Id.* at page 73; line 22

Q. Or the same? *Id.* at page 73; line 23.

MR. SCAROLA: Same objection, same instruction. *Id.* at page 73; line 25.

Q. Did you tell him that you...wanted to make more money than you had in the preceding year? *Id.* at page 74; lines 2-4.

MR. SCAROLA: Same objections and instructions. *Id.* at page 74; lines 5-6.

Q: And what number did he say to you? *Id.* at page 74; line 13.

MR. SCAROLA: Objection and same instruction. *Id.* at page 74; lines 14-15.

Here, the question as to why Edwards, who owned and ran his own firm and was already prosecuting these “lucrative” Epstein cases, was willing to join RRA needs to be answered, as the discovery tactics employed while the Epstein cases were prosecuted by RRA is the crux of this litigation. *See Edwards's Fourth Amended Counterclaim; Affidavit of Bradley Edwards dated April 23, 2010; Affidavit of Bradley Edwards dated September 21, 2010; Epstein's Answer and Affirmative Defenses.* Moreover, Edwards has already admitted that the expenditures in investigation of the Epstein cases while at RRA was between \$300,000.00 and \$500,000.00, whereas when he was prosecuting them at his own firm he expended possibly more than \$25,000.00 in expenditures. *See Deposition of Bradley Edwards March 2010.* Accordingly, Edwards must be compelled to respond to questioning regarding this issue.

NOTICE OF EDWARDS'S INTENT TO USE INFORMATION AT TRIAL

Finally, and most significantly, Edwards intends to rely upon much of this information about which he refuses to answer at trial. For example, Edwards's Fourth Amended Counterclaim espouses the following: “While prosecuting the legitimate claims on behalf of his

clients, EDWARDS has not engaged in any unethical, illegal, or improper conduct nor has EDWARDS taken any action inconsistent with the duty he has to vigorously represent the interests of his clients. EPSTEIN has no reasonable basis to believe otherwise and has never had any reasonable basis to believe otherwise.” *See Edwards’s Fourth Amended Counterclaim*, ¶ 8, ¶ 24 (emphasis added). Undeniably, a Plaintiff cannot make such an assertion in a Complaint and not expect to be questioned about it, as information supporting an allegation pled in a Complaint is the very definition of discoverable information under the Florida Rules of Civil Procedure. *See FLA. R. CIV. P. 1.280(b)*. This is just one example of the conclusory allegations made in Edwards’s Complaint that must be proven by Edwards. Epstein, therefore, must be permitted question Edwards about each and every allegation therein, and Edwards must be compelled to respond. *See Fourth Amended Counterclaim*.

CONCLUSION

For all of the foregoing reasons, and in reliance upon the case law, the Florida Statutes, the Florida Rules of Civil Procedure, and the evidence and exhibits delineated above, Epstein respectfully requests that this Court enter and Order compelling Edwards to respond to the questions delineated above, and instructing his counsel to refrain from utilizing and interjecting improper objections.

WE HEREBY CERTIFY that a true and correct copy of the foregoing was served, via electronic service, to all parties on the attached service list, this September 24, 2013.

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