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

CASE NO.: 502009CA040800XXXXMBAG

JEFFREY EPSTEIN,

Plaintiff,

vs.

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

Defendant,
_____/

RESPONSE IN OPPOSITION TO PLAINTIFF/COUNTER-DEFENDANT'S MOTION TO CONTINUE HEARING SCHEDULED FOR OCTOBER 3, 2017 AND/OR EXTEND TIME TO FILE MOTIONS RELATED TO COLLATERAL QUASI-CRIMINAL CASES

Defendant/Counter-Plaintiff Bradley J. Edwards, by and through undersigned counsel, hereby submits this Response in Opposition to Plaintiff/Counter-Defendant Jeffrey Epstein's Motion to Continue Hearing Scheduled for October 3, 2017 and/or Extend Time to File Motions Related to Collateral Quasi-Criminal Cases, and as grounds therefor states as follows:

Summary

In 2009, Plaintiff/Counter-Defendant Jeffrey Epstein filed suit against attorney Bradley J. Edwards, alleging that Mr. Edwards had fabricated certain civil claims arising from Epstein's systematic sexual abuse of minor female children as part of a fraudulent Ponzi scheme that Edwards was running with Scott Rothstein and one of Edwards's clients, LM. At the time Epstein filed suit, the validity of Epstein's criminal plea deal was being challenged by

his minor child victims in Doe v. United States, case no. 08-cv-80736-KAM. For the next three (3) years, Epstein nonetheless pursued his claims against Mr. Edwards never once suggesting a stay of this case was in order, and carrying the burden of proof with full knowledge of that pending Crime Victim Rights Act proceeding. In fact, Epstein even cited the Doe v. United States case in paragraph 29(4) of his Amended Complaint filed on April 12, 2011, wherein he acknowledged that one of the potential outcomes of Doe was the Federal Court "invalidating the [Non-Prosecution] Agreement."

In 2012, Epstein voluntarily dismissed his claims against Mr. Edwards only days before a scheduled summary judgment hearing. Mr. Edwards immediately amended his counterclaim to assert a claim for malicious prosecution, alleging that Epstein had no probable cause to initiate this suit in the first place. The allegations made against Epstein by Edwards were in fact true, and the horrific nature of Epstein's conduct against Edwards's clients obviated any need for Mr. Edwards to fabricate his clients' claims.

On September 25, 2017, less than three months before trial, Epstein filed the underlying Motion to Continue and indicated that he would be moving to stay these proceedings until Doe v. United States is resolved. Thus, after assuming the burden of proof for three years, Epstein now claims that he cannot defend this case and will "be forced to invoke his Fifth Amendment privileges" as a result of the prior-filed 2008 Crime Victim Rights Act proceeding. Epstein's desperate, last-ditch effort to avoid a trial on the merits should be rejected. Epstein filed the underlying action forming the basis of Mr. Edwards's malicious prosecution claim after the Doe v. United States proceeding ***had been pending for over a year***. Epstein's Amended

Complaint explicitly recognized that one of the potential outcomes of that proceeding was the Federal Court "invalidating the [Non-Prosecution] Agreement." To now suggest, on the eve of trial, that this case should be stayed indefinitely pending resolution of that proceeding is belied by common sense and is an affront to Mr. Edwards's right to a timely trial on the merits. Epstein initiated this litigation. He asserted that the claims being pursued by Mr. Edwards's clients were false and fabricated. After eight long years, the time has finally come for a jury to determine whether Epstein had any basis for these allegations, and Epstein is barred from using a prior-filed 2008 proceeding to avoid that determination. We should make the point that Epstein pled guilty when asked by the State trial court about similar allegations; had his deposition taken numerous times in those cases and took the 5th each time; then filed this action and also chose to invoke the 5th.

Memorandum of Law

a. **Waiver**

"Waiver is the intentional or voluntary relinquishment of a known right or conduct which warrants an inference of the relinquishment of a known right." Aberdeen Golf & Country Club v. Bliss Const., Inc., 932 So. 2d 235, 244 (Fla. 4th DCA 2005). The elements of waiver are: (1) the existence at the time of the waiver of a right privilege, advantage or benefit which may be waived; (2) the actual or constructive knowledge of the right; and (3) the intention to relinquish the right. Goodwin v. Blu Murray Ins. Agency, Inc., 939 So. 2d 1098, 1104 (Fla. 5th DCA 2006). Epstein clearly waived any argument that the 2008 Doe v. United States proceeding impeded his defense of Mr. Edwards' malicious prosecution claim when he filed this underlying action in 2009,

over a year after Doe was first initiated. Moreover, Epstein directly cited to and referenced the pending Doe v. United States proceeding in his Amended Complaint filed on April 12, 2011:

> . . . Instead, the purpose of requesting those records was to obtain them for use in a separately filed Criminal Victims Rights Act (CVRA) suit, *Jane Doe 1 and Jane Doe 2*, Case No. 08-80736-CIV, Marra/Johnson, which was brought for several purposes, ***including invalidating the [Non-Prosecution] Agreement*** . . .

Amended Complaint at paragraph 29(4) (emphasis added).

Epstein therefore not only knew that Doe v. United States was pending, but he acknowledged to this Court way back in 2011 that one of the potential outcomes of that proceeding was the invalidation of his plea deal. Certainly, if Epstein intended to rely on this fact to stay or delay this proceeding, the time to raise it was (at the very latest) April 12, 2011, when Epstein filed that Amended Complaint. He failed to do so, and instead chose to prosecute his underlying claims for another year and defend against Mr. Edwards' malicious prosecution claim for five more years. That active participation serves to waive any argument that the Doe v. United States proceeding justifies an indefinite stay of this case. C.f. Gordon v. Shield, 41 So. 3d 931, 033 (Fla. 4th DCA 2010) (stating that, in the context of arbitration, a party's "active participation in litigation" serves to waive the right to arbitration).

b. **Equitable Estoppel**

Epstein's attempt to stay this case is also barred by the doctrine of equitable estoppel, which has been a fundamental principle of American jurisprudence for centuries. Florida Dept. of Health & Rehab. Services v. S.A.P., 835 So. 2d 1091, 1096 (Fla. 2002). Equitable estoppel is "based on principals of fair play and essential justice [that] arises when one party lulls another

party into a disadvantageous legal position." Bueno v. Workman, 20 So. 3d 993, 997 (Fla. 4th DCA 2009). The elements of equitable estoppel are: (1) a representation as to a material fact that is contrary to a later-asserted position, (2) reliance on that representation, and (3) a change in position detrimental to the party claiming estoppel, caused by the representation and reliance thereon. Id.

It is difficult to imagine a more clear-cut example of equitable estoppel than Epstein's eleventh-hour attempt to indefinitely stay litigation that he started, based on a situation that he created. Epstein filed suit, representing to this Court and Mr. Edwards that he intended to prove that Mr. Edwards had fabricated the sexual abuse allegations against him. Epstein did so with full knowledge of the pending Doe v. United States proceeding and while recognizing the possibility that his Non-Prosecution Agreement could be invalidated.

Mr. Edwards was forced to defend against these allegations for three (3) years, in reliance on Epstein's representations. After Epstein voluntarily dismissed his claims, Mr. Edwards then spent the next five (5) years pursing his malicious prosecution claim, which required Epstein to put forth at least some evidence that the allegations asserted in the underlying complaint were true: Mr. Edwards' clients had in fact pursued false sexual abuse claims against Epstein. Mr. Edwards has therefore expended substantial time and resources in this litigation in reliance on Epstein's representation that Epstein had probable cause to pursue his claims in the first place.

Now, on the eve of trial, Epstein has changed tactics and asserted a new position: he cannot defend against the malicious prosecution claims because of the 2008 Doe v. United States proceeding, which was filed *before* Epstein initiated this litigation. If that is true, how did Epstein intend to

prove his claims against Mr. Edwards in the first place? Certainly, if Epstein could not defend against a malicious prosecution claim, then he should never have filed the underlying action to begin with. Simply put, Epstein's eleventh-hour attempt to avoid a trial ***due to circumstances that he created*** is unavailing and should be rejected based on the principles of equitable estoppel.

Conclusion

Based upon the foregoing, Defendant/Counter-Plaintiff Bradley J. Edwards respectfully submits that Jeffrey Epstein's Motion to Continue and request for an eleventh-hour stay of this case should be denied.

I HEREBY CERTIFY that a true and correct copy of the foregoing was sent via E-Serve to all Counsel on the attached list, this 28th day of Sept., 2017.

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