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

CASE NO. 502009CA040800XXXXMB

JEFFREY EPSTEIN,

Plaintiff/Counter-Defendant,

-vs-

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

Defendant/Counter-Plaintiffs.

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PLAINTIFF/COUNTER-DEFENDANT JEFFREY EPSTEIN'S REPLY TO DEFENDANT/COUNTER-PLAINTIFF BRADLEY EDWARDS'S RESPONSE IN OPPOSITION TO PLAINTIFF/COUNTER-DEFENDANT'S MOTION FOR ATTORNEYS' FEES AND COSTS

Plaintiff/Counter-Defendant Jeffrey Epstein ("Epstein"), by and through his undersigned counsel, hereby files this Reply to Defendant/Counter-Plaintiff Bradley Edwards's ("Edwards") Response in Opposition to Epstein's Motion for Attorneys' Fees and Costs and states:

INTRODUCTION

On June 2, 2014, Epstein filed his Motion for Attorneys' Fees and Costs pursuant to §768.79 of the *Florida Statutes* and Rule 1.442 of the *Florida Rules of Civil Procedure*. On June 26, 2014, Edwards filed his Response in Opposition to Epstein's Motion for Attorneys' Fees and Costs, asserting therein that Epstein's Proposal for Settlement (hereinafter "Proposal") failed to comply with the requisites delineated in both §768.79 of the *Florida Statutes* and Rule 1.442 of the *Florida Rules of Civil Procedure*. Specifically, Edwards submits two arguments to support his assertion that Epstein's Proposal was invalid; to wit: "[t]he Proposal is invalid because Epstein failed to

explain material terms of the confidentiality clause, and its implications;" and that Epstein "cannot prove he has beaten or even equaled his Proposal." See *Edwards's Response in Opposition to Plaintiff/Counter-Defendant's Motion for Fees and Costs* (hereinafter "Edwards's Opposition"), p. 5, 6. However, as expounded in detail below, Edwards's arguments are fatally flawed and meritless, and Epstein is entitled to his Attorneys' Fees and Costs as a matter of law.

ARGUMENT

I. Epstein's Proposal Properly States all Material and Non-Monetary Terms with the Requisite Particularity.

Rule 1.442 of the *Florida Rules of Civil Procedure* delineates the requisites for proposals for settlement authorized by Florida law and provides, in pertinent part, that

> (2) A proposal shall: (A) name the party or parties making the proposal and the party or parties to whom the proposal is being made; (B) identify the claim or claims the proposal is attempting to resolve; (C) state with particularity any relevant conditions; (D) **state the total amount of the proposal and state with particularity all nonmonetary terms of the proposal**; (E) state with particularity the amount proposed to settle a claim for punitive damages, if any; (F) state whether the proposal includes attorneys' fees and whether attorneys' fees are part of the legal claim; and (G) include a certificate of service in the form required by Rule 1.080(f).

FLA. R.CIV. P 1.442(2) (2013) (emphasis added). Edwards recognizes these requirements in his Opposition, yet he mistakenly avows that Epstein's Proposal is invalid because it "Failed to Include a Summary of Important Confidentiality Terms." *See Edwards's Opposition*, p. 5. In further support of this assertion, Edwards places his reliance on cases inapposite to the case at hand.

First, Edwards argues that Epstein's Proposal fails to comply with *State Farm Mut. Auto Ins. Co. v. Nichols*, 932 So. 2d 1067 (Fla. 2006) and its progeny regarding the specificity of the non-monetary terms. *See Edwards's Opposition*, p. 4. However, such reliance is misplaced since in *Nichols*, as well as *every other case* to which Edwards cites, the rulings unequivocally establish

that a Proposal for Settlement complies with the particularity requisites as delineated in Rule 1.442(B) of the *Florida Rules of Civil Procedure* if it contains *any one* of the following: the language of the proposed release agreement; a summary of the substance of the release agreement; or, as in the case at hand, the proposed release agreement **is actually attached to the Proposal**. *See Nichols*, 932 So. 2d at 1079-80. Moreover, in *Nichols*, the Florida Supreme Court held that the language used by State Farm in its release was ambiguous due to other policies existing between the plaintiff and the defendant that were not specifically addressed. The high court specifically opined:

> The district courts have consistently held, and we agree, that settlement proposals must clarify which of an offeree's outstanding claims against the offeror will be extinguished by any proposed release. See, e.g., Dryden, 910 So.2d at 856–57 (holding that the description of a general release was "not as clear and as certain as it should be," because it "could have been found ... to have extinguished" additional claims); Palm Beach Polo, 904 So.2d at 653 (holding that "the offer was legally deficient because plaintiff's acceptance could have extinguished other pending unrelated claims"); Morgan v. Beekie, 879 So.2d 110, 111 (Fla. 5th DCA 2004) (holding that an offer "cannot be a basis for an award of attorney's fees because it was both ambiguous and failed to make it clear that it was solely for personal injuries when the settlement of the property damage claim had not yet been fully consummated").

Id. at 1080. Conversely, in the case at hand, Epstein's thorough and explicit release was attached to the Proposal. This release further explained, in detail, all of the claims to which it was applicable, and expressly delineated the terms and conditions of confidentiality included in the release. *See Plaintiff/Counter-Defendant Jeffrey Epstein's Proposal for Settlement to Defendant/Counter-Plaintiff Bradley Edwards, Individually*, attached hereto as "Exhibit A." There are no other cases, no other parties to this action, and no other potential claims to which the settlement could possibly allude, rendering the comparison to these cases cited by Edwards misguided. Accordingly, Edwards's argument is inapt, and Epstein's Motion should be granted.

Next, Edwards attempts to assert that Epstein's confidentiality clause was deficient, and in so doing relies upon *Swartsel v. Publix Supermarkets, Inc.*, 882 So. 2d 449 (Fla. 4th DCA 2004). This case, just as *Nichols*, is wholly inapposite. In *Swartsel*, a case in which the Appellant was represented by Edwards's trial counsel, who is therefore cognizant of the clear dispositive factual differences between that case and the case at hand, the court held that the defendant's proposal was insufficient as a matter of law to authorize attorney's fees. The proposal for settlement in *Swartsel* provided that "Publix's Proposal for Settlement is conditioned upon Plaintiff's acceptance of same pursuant to Rule 1.442, a stipulation for an order dismissing this action with prejudice, *and Plaintiff's execution of a confidential settlement agreement and general release.* [e.s.]." *Id.* at 452. However, in *Swartsel*, **unlike in the case at hand**, **"[n]o other details of the proposed "confidential settlement agreement" and "general release" were stated in the offer. No copy of the actual "confidential settlement agreement" and "general release" being proposed were attached as separate documents to the offer.**" *Id.* (emphasis added).

Further, in *Jones v. Publix Supermarkets, Inc.,* 68 So. 3d 422 (Fla. 4th DCA 2011) the court stated that it is the preferred practice to set forth the terms of a release accompanying a proposal for settlement under the offer of judgment rule with particularity, either within the body of the proposal or by attaching the form of the release. Epstein fully complied with the requisites under Florida law by attaching a copy of both the general release and the stipulation for dismissal with prejudice to his Proposal. The confidentiality paragraph expressly set forth in the general release attached to the Proposal provided, in relevant part:

> As further consideration, I agree not to disclose the details of this release in settlement of all claims, including the nature or the amount paid and the reasons for the payment, to any person other than my lawyer, accountant, income tax preparer, or by valid order of a Court of competent jurisdiction whether directly or indirectly. To the extent that I must disclose any of the above information to any of the above named persons, I shall instruct that person or persons to keep the

information confidential.

See Exhibit A. The law is clear that the language of the proposed release, or a summary of the substance of the release, must be included with the offer to comply with the requirement that it be particular. *Id.* *See also Nichols*, 851 So. 2d at 746. The fact that Epstein's settlement agreement and release was attached to the Proposal, coupled with the clear terms by which Edwards would be bound had he accepted it, is in stark contrast to the complete lack of *any* details or summary of terms as existed in the rejected proposal in *Swartsel*. Here, Epstein's offer to dispose of all of Edwards's claims for $300,000.00 in exchange for a general release that included a confidentiality clause and dismissal with prejudice, both of which were attached in complete form to the Proposal and "require no judicial interpretation," renders Epstein's Proposal "sufficiently particular in its nonmonetary terms to satisfy the requirements of rule 1.442(c)(2)(D)." *1 Nation Technology Corp. v. A1 Teletronics, Inc.,* 924 So. 2d 3, 7 (Fla. 2d DCA 2005); *Swartsel v. Publix Supermarkets, Inc.*, 882 So. 2d 449 (Fla. 4th DCA 2004). As such, Edwards's Opposition is fatally flawed, and Epstein should be awarded his Attorneys' Fees and Costs.

Finally, in *Ziadie v. Feldbaum*, 84 So. 3d 435 (Fla. 4th DCA 2012), a case in which the appellant was represented by Edwards's appellate counsel (who authored Edwards's Opposition to Epstein's Motion), the Fourth District Court of Appeal held:

> [T]he proposals for settlement did not comply with Florida Rule of Civil Procedure 1.442. **Without the attachment of the agreements for release, indemnity, and contribution, or an inclusion of their terms in the proposals of settlement, the proposals did not satisfy the particularity requirement of Rule 1.442(c)(2), which requires the settlement proposals to "state with particularity any relevant conditions" and "non-monetary terms."** See State Farm Mut. Auto. Ins. Co. v. Nichols, 932 So.2d 1067, 1079 (Fla.2006). Thus, they are "too ambiguous to satisfy rule 1.442." Id.

Ziadie v. Feldbaum, 84 So. 3d 435 (Fla. 4th DCA 2012). As stated above, in the case at hand, the "relevant conditions" and the "non-monetary terms" of Epstein's Proposal were fully and clearly

detailed in the general release, which was attached to the Proposal, thereby irrefutably satisfying the requirement of Rule 1.442 of the *Florida Rules of Civil Procedure*, *State Farm Mut. Auto. Ins. Co. v. Nichols,* 932 So. 2d 1067, 1079 (Fla. 2006), *Ziadie v. Feldbaum*, 84 So. 3d 435 (Fla. 4th DCA 2012), *Swartsel v. Publix Supermarkets, Inc.*, 882 So. 2d 449 (Fla. 4th DCA 2004), and their progeny.

II. Epstein has Obtained a Better Result than he Proposed within his Proposal for Settlement and Release.

Finally, Edwards asserts that Epstein's Proposal is invalid because he "can never prove he has obtained a better result than he proposed within his release." *See Edwards's Opposition,* p. 6. It is irrefutable that **a judgment in favor of Epstein** was entered and that Edwards received **$0.00** in damages. Conversely, had Edwards accepted the Proposal, Epstein would have paid Edwards the sum of three hundred thousand dollars ($300,000.00). The judgment granted to Epstein is, incontrovertibly, a better result for Epstein. Moreover, pursuant to §768.79 of the *Florida Statutes*, which governs entitlement to costs and attorneys' fees in this instance, "obtaining a better result" is not the standard by which the Court must adhere. Rather, §768.79 provides that the offeror who makes an offer of judgment that is wrongfully rejected by the offeree is entitled to "reasonable costs and attorney's fees if the judgment **is for no liability** or is at least 25% less than the offer." *Disney v. Vaughen*, 804 So. 2d 581, 583 (Fla. 5th DCA 2002); § 768.79 FLA. STAT. (2013). "The statute creates a mandatory right to attorney's fees when the statutory 'prerequisites have been fulfilled: i.e., (1) when a party has served ...an offer of judgment, and (2) that party has recovered a judgment ...less than the ... offer.'" *Levine v. Harris*, 791 So. 2d 1175, 1177 (Fla. 4th DCA 2001) (citing Schmidt v. Fortner, 629 So. 2d 1036,1040 (Fla. 4th DCA 1993). Accordingly, Epstein, who was granted a judgment of "no liability," is entitled to his Attorneys' Fees and Costs as a matter of law.

Edwards, however, claims that the Proposal is invalid because the confidentiality clause contained in the release should have had a monetary value apportioned to it. There is **no requirement under Florida law** that a standard confidentiality clause in a general release be apportioned a monetary value. *See* FLA. R.CIV. P 1.442 (2013); § 768.79 FLA. STAT. (2013). In fact, under the afore-referenced Rule of Civil Procedure governing proposals for settlement, as well as the case law interpreting same, a confidentiality clause is a "non-monetary term." *See* FLA. R.CIV. P 1.442 (2013); *State Farm Mut. Auto. Ins. Co. v. Nichols,* 932 So. 2d 1067, 1079 (Fla. 2006), *Ziadie v. Feldbaum*, 84 So. 3d 435 (Fla. 4th DCA 2012), *Swartsel v. Publix Supermarkets, Inc.*, 882 So. 2d 449 (Fla. 4th DCA 2004).

Nevertheless, in support of this assertion, Edwards relies upon *Danow v, Law Office of David E. Borack, P.A.*, 367 Fed. Appx. 22 (11th Cir. 2010). Such reliance is misplaced for numerous reasons. In *Danow*, the Offer of Judgment at issue was made pursuant to Rule 68 of the *Federal Rules of Civil Procedure* and the court, in conducting its analysis, relied exclusively on Federal law interpreting Rule 68; most of which was from other circuits. *Id.* at 23-24. Here, neither the *Federal Rules of Civil Procedure* nor Federal law is apposite. Most importantly, however, the law is clear that even Federal courts in Florida, when adjudicating Florida law claims, must apply the Florida statutes regarding attorneys' fees awards after an offer of judgment or demand for judgment, rather than federal law, to determine whether to award attorneys' fees. *Kearney v. Auto-Owners Ins. Co.,* 713 F. Supp. 2d 1369, 1374 (M.D. Fla. 2010) (citing § 768.79 FLA. STAT.). *See also Menchise v. Akerman Senterfitt*, 532 F.3d 1146, 1150 (11th Cir.2008). As such, the *Danow* case and its ruling have no bearing on the case at hand and should not be considered by the Court.

Likewise, every other case upon which Edwards purports to rely in asserting his argument

is readily distinguishable and has no consequence on this matter. In the case of *Zalis v. M.E.J. Rich Corp.*, 797 So. 2d 1289 (Fla. 4th DCA 2001), the court rejected the proposal for settlement because "[t]he condition that a plaintiff relinquish all rights to sue about anything at any point in the future is intrinsically a condition incapable of being stated with the particularity required under section 768.79 of the Florida Statutes. No reasonable estimate can be assigned to such a waiver." *Id.* There was no such condition in Epstein's Proposal. In *Dryden v. Pedemonti*, 910 So. 2d 854, 857 (Fla. 5th DCA 2005), "[t]he settlement proposal required Pedemonti to execute a full release, which was **not attached to the proposal.**" *Id.* (emphasis added). In *Earnest & Stewart, Inc. v. Codina*, 732 So. 2d 364 (Fla. 3d DCA 1999), the proposal contained language requiring a hold harmless agreement "in the event of claims by third persons who are not a party to this action." *Id.* There is no such language in the Proposal or the release agreement attached thereto in the case at hand. In *Diamond Aircraft Indus., Inc. v. Horowitch*, 107 So. 3d 362 (Fla. 2013), the Supreme Court of Florida rejected the proposal by stating: "even if section 768.79 applied in this case, Diamond Aircraft would not be entitled to attorney's fees under that section because Diamond Aircraft's offer of settlement did not strictly comply with rule 1.442, as it did not state that the proposal included attorney's fees and attorney's fees are part of the legal claim." *Id.* The Proposal for Settlement filed by Epstein, unlike the proposal at issue in *Diamond Aircraft*, clearly stated that it included attorney's fees. As such, there is neither a case nor a rule of law in Florida to support Edwards's argument, and Epstein's Motion should be granted.

CONCLUSION

For all of the reasons above, and in reliance upon the case law cited above and in his original Motion, Epstein respectfully requests that this Court grant his Motion for Attorneys' Fees and Costs.

I HEREBY CERTIFY that a true copy of the foregoing was furnished to all counsel on the attached service list, via electronic service, this September 22, 2014.

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