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 IN OPPOSITION TO DEFENDANT/COUNTER-PLAINTIFF BRADLEY EDWARDS' MOTION TO LIFT CONFIDENTIALITY DESIGNATION OF EPSTEIN'S DISCLOSURE OF CONFIDENTIAL SETTLEMENT INFORMATION

Plaintiff/Counter-Defendant, Jeffrey Epstein ("Epstein"), opposes the Motion filed by Defendant/Counter-Plaintiff, Bradley J. Edwards ("Edwards"), to Lift Confidentiality Designation of Epstein's Disclosure of Confidential Settlement Information, and states:

BACKGROUND

In support of his malicious prosecution Counterclaim, Edwards has identified as witnesses multiple women who filed civil tort claims against Epstein. [D.E. 1042]. These women include the three clients he represented plus other alleged victims. Neither Edwards' three clients nor the other women are parties to this litigation. As previously argued, allowing any introduction or discussion of the other, unrelated claims or lawsuits would create multiple mini-trials and result in a month-long trial in this case.

On January 5, 2018, the Court ordered Epstein to disclose **as confidential, for attorneys'**

and clients eyes only, "the number of claims settled regarding individuals who alleged to be victims of sexual misconduct by Epstein" by Epstein from December 6, 2007 to December 6, 2009, and the "gross settlement amount." The same was ordered for the period December 7, 2009 through the present. ***See* Exhibit "A"** (the "Confidentiality Order").

Epstein timely produced this court-ordered information to Edwards in a document titled "Confidential, for Attorneys' and Client's Eyes Only Epstein's Disclosure of Confidential Settlement Information."

The Confidentiality Order requires a party to file an appropriate motion to lift the confidentiality designation prior to quoting, disclosing, relying on or using in this litigation any of the confidential settlement information. ***See* Ex. "A" at ¶3**.

Within two days of receiving the information, Edwards filed his motion to lift the confidentiality designation concerning the aggregate number of claims settled by Epstein before and after this lawsuit was filed. Edwards argues these numbers are relevant to Epstein's motive in filing suit against Edwards, and that the Court has already ruled the number of claims pre-dating this lawsuit is admissible. Edwards' arguments are meritless, and his motion should be denied.

The primary issue in this case is whether Epstein had probable cause to file his lawsuit against Edwards. Relevant to that issue are: the publicly available information about Rothstein, the Ponzi scheme, the use of *Edwards' clients' cases* against Epstein in the Ponzi scheme, and Edwards' role in the notorious litigation practices of the Rothstein firm while Edwards represented himself as a partner of that firm. Epstein has focused on these relevant matters, while Edwards persists with his attempts to inject irrelevant, highly prejudicial and inflammatory evidence into the trial, which evidence will confuse the jurors and distract them from the issues

at bar and necessitate an extended collateral inquiry—all of which will lead to but one result—a second trial of this case.

ARGUMENT

A. The Court Should Revisit Its Prior Ruling

Edwards notes this Court has already ruled admissible the number of claims Epstein faced when he filed and proceeded with his suit against Edwards. In its January 16, 2018 omnibus order, the Court stated:

> the parties may speak ***generally about the number*** of claims that Epstein was facing at the time he initiated, and during his continuance, of this proceeding against Edwards. The details, the merits and what may have been discovered in cases against Epstein which were not prosecuted by Edwards will not be admissible . . . ." [emphasis added]

(1/16/18 Order on Epstein's Revised Omnibus Motion in Limine Section D (References to Cases Not Litigated By Edwards)).

To speak *generally* about the number of other claims would be to say, "Epstein faced other alleged claims," but not the specific number of such claims. Thus, according to the Court's written order, the *specific* number of claims would not be admissible.

In any event, "a nonfinal or temporary order may be revisited by a judge at any time before the conclusion of the case." *Strominger v. AmSouth Bank*, 991 So. 2d 1030, 1034 (Fla. 2d DCA 2008). Epstein respectfully requests this Court to revisit its ruling, because any testimony about the number of *unrelated* claims Epstein faced at any time has slight, if any, probative value, compared to the danger of unfair prejudice, confusion of issues, *and* misleading the jury.

1. Epstein's Settlement of Other Claims is Irrelevant to the Issues in This Case

As a general rule, evidence about settlement agreements is inadmissible, *Charles B. Pitts Real Estate, Inc. v. Hader*, 602 So. 2d 961, 963 (Fla. 2d DCA 1992). The Court should follow

the general rule and decline to admit any evidence about unrelated settlements in this case.

Furthermore, "[t]o be relevant, evidence must tend to prove or disprove a material fact." *Thigpen v. United Parcel Servs., Inc.*, 990 So. 2d 639, 646 (Fla. 4th DCA 2008); § 90.401, Fla. Stat. The number of unrelated claims settled by Epstein with individuals who *alleged* to be victims of sexual misconduct by Epstein before and after this lawsuit was filed has no bearing on the issue for trial—Edwards' Counterclaim for malicious prosecution against Epstein. As the Court knows well, there are many potential reasons to settle a lawsuit, even if a party could ultimately prevail. *See Hader*, 602 So. 2d at 963. Epstein, like any other defendant threatened with the possibility of litigation, may have settled other claims for all sorts of reasons. The jury cannot and should not be forced to speculate as to the basis for these unrelated settlements.

2. Edwards' "Motive" Argument is Meritless, Too

Edwards contends that one of Epstein's primary motives in filing this lawsuit was "to intimidate [claimants] into cheaply compromising or abandoning" their claims against Epstein. Thus, contrary to Edwards' argument (Mot. at ¶5), the number of pre-suit settlements would be irrelevant. Those claims had already settled. Further, this alleged motive is belied by the fact that Edwards' three claimants—who settled with Epstein *after* he filed suit against Edwards—settled for more than any other claimant! This does not reflect intimidation of claimants, abandonment of claims or cheap compromise. In fact, when comparing the pre- and post-suit settlement numbers, Epstein settled more claims *after* filing suit against Edwards.

At most, the number of *un*settled claims Epstein faced at the time he filed suit could be marginally relevant to motive or malice. But as discussed below, any testimony about the number of unrelated claims Epstein faced at *any* time, has slight probative value, compared to the danger of unfair prejudice, confusion of the issues, and misleading the jury. The number of

settled claims (pre-suit and/or post-suit) also constitutes improper character and impeachment evidence.

3. ***Any Probative Value is Outweighed By the Danger of Unfair Prejudice and Jury Confusion***

To the extent Edwards could argue remote relevance, any alleged probative value "is substantially outweighed by the danger of unfair prejudice, confusion of issues, misleading the jury, or needless presentation of cumulative evidence." § 90.403, Fla. Stat. " 'Unfair prejudice' has been described as 'an undue tendency to suggest decision on an improper basis, commonly, though not necessarily, an emotional one.' This rule of exclusion 'is directed at evidence which inflames the jury or appeals improperly to the jury's emotions.' " *Wright v. State*, 19 So. 3d 277 (Fla. 2009).

If the jury in this case hears that Epstein has settled multiple other claims, this will unfairly prejudice Epstein by confusing and distracting the jury from the primary issue before them—whether Epstein had probable cause to file his lawsuit against Edwards. *Compare United Auto. Ins. Co. v. Estate of Levine ex rel. Howard*, 87 So. 3d 782, 785 (Fla. 3d DCA 2011) (lower court properly excluded evidence that the insurance company settled some of the other car accident claimants' claims, because the admission of such evidence brought the risk of distracting the jury by taking their focus away from the real issue—whether the insurance company acted in bad faith in failing to settle the plaintiff's claim; "the trial court fairly balanced the purported relevance and probative value of the [other] settlements against the prejudicial impact").

For example, disclosure of the number of settlements (pre-suit and/or post-suit) would prejudice Epstein because it would allow the jury to speculate improperly on any number of irrelevant matters including the purpose of the settlements, the amount of the settlements, the

nature of the claims resolved by the settlements and other matters that have absolutely nothing to do with the issues at bar. This cannot be permitted.

Undue delay is also possible, as the introduction of the evidence of settled claims may lead to a trial within a trial. *See Slocum v. State*, 757 So. 2d 1246, 1251 (Fla. 4th DCA 2000) ("To open the door to evidence about an unrelated case was to create a trial within a trial; there was a risk that the trial would be needlessly lengthened and that the additional evidence would obscure the discovery of the truth.").

4. ***The Number of Settled Claims is Improper Character Evidence***

Additionally, the number of claims Epstein settled regarding individuals *alleged* to be victims of sexual misconduct by Epstein is inadmissible under sections 90.404 and 90.405, Florida Statutes, because its only purpose is to disparage Epstein's character. Florida law is clear that "[e]vidence of a person's character or a trait of character is inadmissible to prove action in conformity with it on a particular occasion" except under certain limited circumstances not present here. § 90.404(1), Fla. Stat. (2017); *see also* § 90.405(2), Fla. Stat. (2017) ("When character or a trait of character of a person is an essential element of a charge, claim, or defense, proof may be made of specific instances of that person's conduct.") (emphasis added). Here, the number of claims Epstein settled with alleged victims of sexual misconduct is irrelevant to the issues at trial and would serve only to portray Epstein in a negative light.

5. ***Settlement of Sexual Misconduct Claims is Improper Impeachment Evidence***

Lastly, regardless of the numbers, any reference to Epstein having settled claims for sexual misconduct is also inadmissible under section 90.609, Florida Statutes. Such references are inadmissible as they are irrelevant to Epstein's truthfulness agreement. *See* § 90.609, Fla. Stat. (2017) (character evidence used to impeach a witness "may refer only to character relating

to truthfulness").

CONCLUSION

Epstein respectfully requests this Court to revisit its earlier ruling, because *any* testimony about the number of unrelated claims Epstein faced at any time has slight, if any, probative value, compared to the danger of unfair prejudice, confusion of issues, and misleading the jury. Epstein further requests that Edwards' Motion to Lift Confidentiality Designation of Epstein's Disclosure of Confidential Information be denied.

CERTIFICATE OF SERVICE

I certify that the foregoing document has been furnished to the attorneys listed on the Service List below on February 8, 2018, through the Court's e-filing portal pursuant to Florida Rule of Judicial Administration 2.516(b)(1).

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_____/

ORDER COMPELLING EPSTEIN TO PRODUCE SETTLEMENT AMOUNTS

THIS CAUSE came before the Court upon Counter-Plaintiff's *ore tenus* motion on December 7, 2017. The Court, having heard argument of counsel does hereby,

ORDER AND ADJUDGE that:

1. Plaintiff/Counter-Defendant Jeffrey Epstein ("Epstein") shall produce to Defendant/Counter-Plaintiff Bradley J. Edwards ("Edwards") the following: '

   a. The number of claims settled by Jeffrey Epstein regarding individuals who alleged to be victims of sexual misconduct by Epstein, from December 6, 2007 to December 6, 2009;

   b. The gross settlement amount paid by Epstein to individuals who alleged to be victims of sexual misconduct by Epstein, from December 6, 2007 to December 6, 2009;

   c. The number of claims settled by Jeffrey Epstein regarding individuals who alleged to be victims of sexual misconduct by Epstein, from December 7, 2009 through the present; and

' The court has reviewed the hearing transcript and the competing Orders and finds that this Order captures more accurately the intent of the court as it relates to the court's oral rulings at the subject hearing. @

d. The gross settlement amount paid by Epstein to individuals who alleged to be victims of sexual misconduct by Epstein, from December 7, 2009 through the present.

2. The number of claims and amounts shall be produced as "Confidential, for Attorneys' and Clients' Eyes Only," and shall not, directly or indirectly, be disclosed to anyone else or used outside of this litigation.

3. If a party intends to quote, disclose, rely on or use in this litigation information or documents that have been deemed "Confidential, for Attorneys' and Clients' Eyes Only," whether in papers filed with the Court or verbally, in connection with a motion, hearing, deposition or trial, before any such information is quoted, disclosed, relied upon or used, the party must file a Motion to have the information or documents deemed to be no longer confidential, must file the information or documents under seal in accordance with Administrative Order 2.303-9/09 and have the proposed quote, disclosure, reliance or use of such information or documents heard and approved by the Court.

4. The Court defers rulings on the admissibility of the number of claims and the gross settlement amounts disclosed pursuant to this Order and the admissibility of the combined settlement amounts of Edwards' three clients for whom Edwards was prosecuting civil cases against Epstein at the time Epstein filed the December 7, 2009 lawsuit against Edwards. No production of the underlying Settlement Agreements with each of Edwards' three clients or with any other alleged victim is required by this Order. The Court defers ruling on whether there will be any further disclosure of any breakdown of the settlement amounts paid by Epstein.

5. Epstein shall file a new Motion addressing separately the admissibility of the aggregate settlement amount paid to Edwards' three clients and the gross settlement amounts

disclosed pursuant to this Order. The Motion should also address Epstein's position as to the production of any Settlement Agreements underlying any settlements paid by Epstein and outline the confidentiality provisions governing those agreements. To the extent that disclosure of any such provisions is subject to confidentiality, disclosure shall be made under seal in accordance with Administrative Order 2.303-9/09.

6. The parties shall schedule a 30-minute hearing on Epstein's Motion. Edwards shall respond to the Motion in accordance with this Court's judicial instructions.

DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida this 5 day of ~~December~~ Jan, 2010 @

THE HONORABLE DONALD W. HAFELE
CIRCUIT COURT JUDGE

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