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,
_____/

MOTION TO STRIKE JEFFREY EPSTEN'S MOTION FOR AN *IN CAMERA* INSPECTION OF 30 E-MAILS

Bradley J. Edwards ("Edwards"), by and through undersigned counsel, and pursuant to this Court's oral ruling at the November 2, 2018 hearing and its Order on Briefing for In Camera Inspection entered November 9, 2018, hereby files this Motion to Strike Jeffrey Epstein's Motion for an *In Camera* Inspection of 30 e-mails, and as grounds therefor states as follows:

1. At the November 2, 2018 hearing, the Court outlined the briefing schedule for the *in camera* inspection related to Edwards' privileged materials. In response to undersigned counsel's concern that Epstein's counsel had already seen, reviewed, and analyzed these privileged materials, and placed them in the public Court record[1], the Court explicitly stated that Epstein was to simply file a "generic" motion for in camera inspection, and that any substantive discussion of the e-mails would be limited to a confidential memorandum of law to be submitted to the Court under seal:

[1] Despite full knowledge that the e-mails were listed on Edwards' privilege log **and** were the subject of a Federal Court order. *See below.*

> THE COURT: Well, that may be. That may be fine for legal argument, but I want to get to the practical aspects of trying to -- for my own purpose, be able to adequately review the legal arguments in connection with the emails at issue. And at least from the attorneys' standpoint, and Mr. Epstein's standpoint, as I understand it, the cat is out of the bag in that regard. So, I can't undo what's already been done, and that's been years ago.
>
> MR. SCAROLA: So we don't want to aggravate the problem.
>
> **THE COURT: And I agree. That's why I'm saying that I think the best approach would be for a motion to be filed of a <u>generic</u> quality that does not mention any contents of these emails, but simply tees it up, so to speak, with the understanding on this record today that <u>any substantive discussion of those emails will be done under seal by way of memorandum</u>, and that will be done under seal and will continue to be under seal, and will be filed under seal in case of a need for appellate review.**

11/2/2018 Hearing Transcript at 122:20-123:8 (excerpt copy attached hereto as Exhibit 'A').

2. On November 9, 2018, the Court entered its Order on Briefing for In Camera Inspection, in which it reiterated that any public filing by Epstein was limited solely to a "generic" motion for in camera inspection:

> On or before November 9, 2018, Epstein shall file a generic Motion for an *in camera* inspection.

Order at ¶ 4 (copy attached hereto as Exhibit 'B').

3. In contrast, any citation or reference to the privileged emails was to be made in the sealed Memorandum of Law:

> Separately, Epstein shall file under seal a detailed Memorandum of Law in which Epstein's counsel may specifically cite and refer to the 47-emails at issue . . .

Order at ¶ 5.

4. In what can only be described as a complete disregard for this Court's rulings and the sacrosanct nature of a privilege assertion, Epstein instead filed a 20-page (!) Motion for *in*

camera inspection, complete with over 120 pages of exhibits. Epstein's motion accuses Edwards of a deliberate attempt to "conceal" the privileged emails on the privilege log,[2] of falsely asserting privilege where none existed, [3] potential perjury,[4] and application of the crime-fraud exception with respect to Edwards' purported conduct.[5] A copy of Epstein's Motion, excluding exhibits, is attached hereto as Exhibit 'C'.

5. And, despite the Court's explicit direction that the contents of these emails were not to be discussed, Epstein repeatedly addresses the e-mails in a substantive manner throughout his unauthorized pleading:

> "The 30-emails . . . eviscerate Edwards' damages claim and directly controvert Edwards' . . . representations . . . regarding the weakness of Edwards' clients' damages claims . . . Edwards' association with Rothstein . . . the litigation tactics in which Edwards improperly engaged, and they destroy the overall credibility of Edwards' allegations against Epstein."[6]
>
> "[T]he e-mails directly debunk Edwards' assertion that he had no involvement with Rothstein, that he acted properly in the litigation, and that there is nothing to demonstrate any weakness in Edwards' now-settled three clients' claims against Epstein."[7]
>
> [T]he e-mails implicate the crime-fraud exception due to] Rothstein's and Edwards' working together."[8]
>
> "[T]hese e-mails are case-ending or worse."[9]

[2] *E.g.* Motion at p. 12
[3] *Id.* at 8
[4] *See id.* at 4.
[5] *Id.* at 17.
[6] *Id.* at 6.
[7] *Id.* at 16.
[8] *Id.* at 17.
[9] *Id.* at 9.

6. There is nothing "generic" about this public filing, which is clearly a "substantive" discussion" of the emails that the Court explicitly stated was to be made in the confidential filing. Any claim that the discussion of the general contents of the privileged e-mails, but not the specific contents, was permitted by the Court's order completely ignores the explicit directions of this Court. In fact, this filing appears to be nothing more than another attempt to utilize privilege information that Epstein should never have had possession of, and to inject salacious allegations into the public record in order to smear Edwards, with the hopes that the media will seize on this information, report on it, and ultimately taint the jury pool.

7. As recent discovery in the bankruptcy proceeding has revealed, however, this is not the first time that Epstein has attempted to knowingly use privileged materials in violation of a court order.

8. As this Court is aware, in March 2018, Epstein sought to admit these emails on the eve of trial *without* requesting an in camera inspection. It was Edwards who notified the Court that these emails were on Edwards' privilege log since 2011, and it was Edwards who notified the Court of the existence of Judge Ray's Bankruptcy Order restricting the use of these emails.

9. Edwards has learned, however, that Epstein was aware that these emails were listed on Edwards privilege log **before** he added them to his proposed Trial Exhibit List in early March 2018,[10] and **Epstein was likely also aware that these emails were the subject of Judge Ray's Order.**[11]

[10] *See* Sworn Declaration of Fact of Scott Link, Esq., attached hereto as Exhibit 'D', attesting that, prior to filing Epstein's Trial Exhibit List: "**I recognized that some documents were listed on a [sic] Farmer Jaffe's privilege log**[.]"

[11] Although Mr. Link dances around this subject in his deposition testimony, and was instructed not to answer certain questions by counsel, the testimony that was provided eviscerates any credible claim that Epstein was not aware of Judge Ray's order before attempting to admit these privileged materials on the eve of the March 2018 trial date.

10. Epstein failed to disclose either fact to this Court.

11. This Court should not permit Epstein to continue to ignore Court orders and to continue to act with complete disregard for the sacrosanct nature of a privilege assertion. This Court was clear: Epstein was to file a "generic" motion to simply tee up the issue. Epstein blatantly ignored that Order. As a consequence, Epstein's Motion should be struck and fees should be awarded in favor of Edwards.

WHEREFORE, Bradley J. Edwards, respectfully requests that the Court enter an Order granting this Motion to Strike Epstein's Motion for an *In Camera* Inspection of 30 E-Mails, awarding Edwards his fees and costs for bringing this motion, as well as awarding any such further relief as the Court deems just and proper given the circumstances.

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 13th day of November, 2018.

JACK SCAROLA
Florida Bar No.: 169440
DAVID P. VITALE JR.
Florida Bar No.: 115179
Attorney E-Mail(s): jsx@searcylaw.com and mmccann@searcylaw.com
Primary E-Mail: ScarolaTeam@searcylaw.com
Searcy Denney Scarola Barnhart & Shipley, P.A.
2139 Palm Beach Lakes Boulevard
West Palm Beach, Florida 33409
Phone: (561) 686-6300
Fax: (561) 383-9451
Attorneys for Bradley J. Edwards

COUNSEL LIST

Bradley J. Edwards, Esquire
staff.efile@pathtojustice.com
425 N Andrews Avenue, Suite 2
Fort Lauderdale, FL 33301
Phone: (954)-524-2820
Fax: (954)-524-2822

Jack A. Goldberger, Esquire
jgoldberger@agwpa.com; smahoney@agwpa.com
Atterbury Goldberger & Weiss, P.A.
250 Australian Avenue S, Suite 1400
West Palm Beach, FL 33401
Phone: (561)-659-8300
Fax: (561)-835-8691
Attorneys for Jeffrey Epstein

Nichole J. Segal, Esquire
njs@FLAppellateLaw.com; kbt@FLAppellateLaw.com
Burlington & Rockenbach, P.A.
444 W Railroad Avenue, Suite 350
West Palm Beach, FL 33401
Phone: (561)-721-0400
Attorneys for Bradley J. Edwards

Kara Berard Rockenbach, Esquire
kara@linkrocklaw.com; tbermudez@flacivillaw.com
Link & Rockenbach, P.A.
1555 Palm Beach Lakes Blvd., Suite 301
West Palm Beach, FL 33409
Phone: (561)-727-3600
Fax: (561)-727-3601
Attorneys for Jeffrey Epstein

Scott J. Link, Esquire
Scott@linkrocklaw.com; Tina@linkrocklaw.com
Scott J. Link, Esquire
Eservice@linkrocklaw.com; Scott@linkrocklaw.com; Kara@linkrocklaw.com;
Angela@linkrocklaw.com; Tanya@linkrocklaw.com; tina@linkrocklaw.com
Link & Rockenbach, P.A.
1555 Palm Beach Lakes Boulevard
Suite 301
West Palm Beach, FL 33401

Phone: (561)-727-3600
Fax: (561)-727-3601
Attorneys for Jeffrey Epstein

Marc S. Nurik, Esquire
marc@nuriklaw.com
One E Broward Blvd., Suite 700
Fort Lauderdale, FL 33301
Phone: (954)-745-5849
Fax: (954)-745-3556
Attorneys for Scott Rothstein

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

JEFFREY EPSTEIN,

Petitioner/Counter-Defendant,

vs. No. 50-2009CA040800XXXXMBAG

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

Defendants/Counter-Plaintiff.

West Palm Beach, Florida

November 2nd, 2018

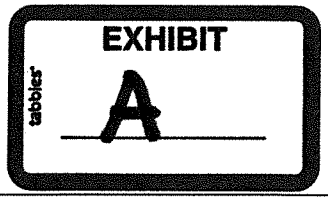
10:25 a.m. - 1:06 p.m.

- - - - - - - - -

Plaintiff/Counter-Defendant Epstein's Motion to Allow Amendment to Exhibit List, et al.

- - - - - - - - -

The above-styled cause came on for hearing before the Honorable Donald W. Hafele, Presiding Judge, at the Palm Beach County Courthouse, West Palm Beach, Palm Beach County, Florida, on the 2nd day of November, 2018.



attorneys'-eyes-only documents that were handed over that do not include the documents that are listed on the privilege log. And that's what we're talking about here. We're talking about privileged documents. The fact that they obtained those documents improperly does not give them any greater right, if anything it gives them a lesser right, to challenge, at this point, the assertion of privilege.

THE COURT: Well, that may be. That may be fine for legal argument, but I want to get to the practical aspects of trying to -- for my own purpose, be able to adequately review the legal arguments in connection with the emails at issue. And at least from the attorneys' standpoint, and Mr. Epstein's standpoint, as I understand it, the cat is out of the bag in that regard. So, I can't undo what's already been done, and that's been years ago.

MR. SCAROLA: So we don't want to aggravate the problem.

THE COURT: And I agree. That's why I'm saying that I think the best approach would be for a motion to be filed of a generic quality that does not mention any contents of these

emails, but simply tees it up, so to speak, with the understanding on this record today that any substantive discussion of those emails will be done under seal by way of memorandum, and that will be done under seal and will continue to be under seal, and will be filed under seal in case of a need for appellate review.

So that is going to be the direction of the Court, that the motion be filed, but that the memorandum be sent under seal to this Court, hand-delivered to me, sealed. And the same response memorandum be sent to me under seal by Mr. Edwards' counsel a week later.

MR. LINK: And shared with each other, though?

THE COURT: Absolutely, for attorneys' eyes only.

MR. LINK: Understood.

THE COURT: Okay? And Mr. Edwards, I understand, is co-counsel, so he has the right to look at them. But it's not to be distributed to anyone else --

MR. LINK: Understand. It's very clear.

THE COURT: -- until I issue an order of

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

Defendants/Counter-Plaintiff.
_____/

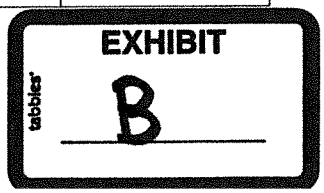
ORDER ON BRIEFING FOR IN CAMERA INSPECTION

THIS MATTER came before the Court upon Counter-Defendant Jeffrey Epstein's ("Epstein") request for an *in camera* inspection of 47 e-mails that Counter-Plaintiff Bradley J. Edwards ("Edwards") claims are privileged. The Court, hereby

ORDERS AND ADJUDGES as follows:

1. For the sole purpose of briefing a memorandum of law for the *in camera* proceedings, Epstein's counsel may unseal the envelope maintained in their offices of the following 47 e-mails Edwards alleges are privileged:

Ex. No.	Bates No.	App. No.
13-1	02645	
13-4	00149	35
13-5	01527	3
13-6	04493-04495	
13-7	00014	36
13-11	00090	37
13-13	00133	68
13-15	08006	31
13-17	00026	70
13-19	01004	71
13-25	12289	33



Ex. No.	Bates No.	App. No.
13-30	26481	
13-34	26480	60
13-35	26356	
13-36	26570	
13-44	03731-03732	
13-45	06406-06408	
13-46	01686	48
13-47	11123-11125	50
13-49	11126-11127	32
13-52	25925	
13-53	25874	
13-56	11145	
13-60	03191-03192	4
13-66	04398-04402	2, 34
13-67	04408-04412	1
13-86	26747	11
13-88	08042-08044	16
13-89	26741-26742	13, 15
13-90	08059-08061	17
13-93	26756-26758	9
13-94	08036-08038	19
13-97	26762	8
13-98	01117	21
13-100	08121-08123	20
13-101	26749-26752	23
13-102	08128-08130	24
13-103	08118-08120	22
13-104	08131-08133	25
13-105	08124-08126	26
13-106	08135-08138	10
13-107	27494	27
13-108	26760	
13-110	25997	28
13-111	25937	67
13-113	26604-26605	56
13-116	07019-07021	

2. These 47 e-mails may be viewed, over Edwards' objection, by Epstein's attorneys of record in this case only and may not be shared with Epstein or anyone else. The Court recognizes that Edwards is co-counsel and is the party asserting the privileges at issue. Restrictions on viewing the documents do not apply to him.

3. Edwards shall deliver copies of the 47 e-mails at issue to The Honorable Donald W. Hafele in a sealed envelope on or before **November 9, 2018**.

4. On or before **November 9, 2018**, Epstein shall file a generic Motion for the *in camera* inspection.

5. Separately, Epstein shall file under seal a detailed Memorandum of Law in which Epstein's counsel may specifically cite and refer to the 47 e-mails at issue. The Memorandum is for attorneys' eyes only and may not be shared with Epstein. Copies of Epstein's Memorandum of Law shall be delivered in a sealed envelope to The Honorable Donald W. Hafele and to Edwards' counsel. After preparation of the Memorandum, the Memorandum and the allegedly privileged documents shall both be sealed pending further order of the Court. Edwards' objections to further review of the allegedly privileged documents by anyone acting on behalf of Epstein and reference by Epstein's counsel to the contents of the documents prior to a ruling on the propriety of Epstein's possession of the documents and his late listing of the documents as trial exhibits are overruled to permit the preparation and filing of the sealed Memorandum of Law.

6. On or before **November 16, 2018**, Edwards shall file his Response Memorandum of Law under seal. The Memorandum is for attorneys' eyes only and shall not be shared with Epstein. Copies of the Response Memorandum shall be delivered in a sealed envelope to The Honorable Donald W. Hafele and Epstein's counsel.

7. The Court shall schedule a hearing on these issues either before or during the week of **November 26, 2018**.

DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida this 6 day of November, 2018.

THE HONORABLE DONALD W. HAFELE
CIRCUIT COURT JUDGE

SERVICE LIST

Jack Scarola Karen E. Terry David P. Vitale, Jr. Searcy, Denny, Scarola, Barnhart & Shipley, P.A. 2139 Palm Beach Lakes Boulevard West Palm Beach, FL 33409 mep@searcylaw.com jsx@searcylaw.com dvitale@searcylaw.com scarolateam@searcylaw.com terryteam@searcylaw.com *Co-Counsel for Defendant/Counter-Plaintiff Bradley J. Edwards*	Philip M. Burlington Nichole J. Segal Burlington & Rockenbach, P.A. Courthouse Commons, Suite 350 444 West Railroad Avenue West Palm Beach, FL 33401 pmb@FLAppellateLaw.com njs@FLAppellateLaw.com kbt@FLAppellateLaw.com *Co-Counsel for Defendant/Counter-Plaintiff Bradley J. Edwards*
Bradley J. Edwards Edwards Pottinger LLC 425 N. Andrews Avenue, Suite 2 Fort Lauderdale, FL 33301-3268 brad@epllc.com *Co-Counsel for Defendant/Counter-Plaintiff Bradley J. Edwards*	Marc S. Nurik Law Offices of Marc S. Nurik One E. Broward Boulevard, Suite 700 Ft. Lauderdale, FL 33301 marc@nuriklaw.com *Counsel for Defendant Scott Rothstein*

Jack A. Goldberger Atterbury, Goldberger & Weiss, P.A. 250 Australian Avenue S., Suite 1400 West Palm Beach, FL 33401 jgoldberger@agwpa.com smahoney@agwpa.com *Co-Counsel for Plaintiff/Counter-Defendant Jeffrey Epstein*	Paul Cassell 383 S. University Salt Lake City, UT 84112-0730 cassellp@law.utah.edu *Limited Intervenor Co-Counsel for L.M., E.W. and Jane Doe*
Scott J. Link Kara Berard Rockenbach Link & Rockenbach, PA 1555 Palm Beach Lakes Blvd., Suite 930 West Palm Beach, FL 33401 Scott@linkrocklaw.com Kara@linkrocklaw.com Tina@linkrocklaw.com Troy@linkrocklaw.com *Trial Counsel for Plaintiff/Counter-Defendant Jeffrey Epstein*	Jay Howell Jay Howell & Associates 644 Cesery Blvd., Suite 250 Jacksonville, FL 32211 jay@jayhowell.com *Limited Intervenor Co-Counsel for L.M., E.W. and Jane Doe*

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

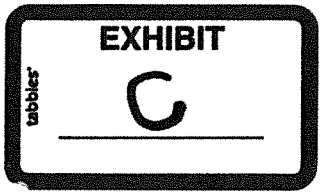
Defendants/Counter-Plaintiff.
_____/

COUNTER-DEFENDANT JEFFREY EPSTEIN'S MOTION FOR AN *IN CAMERA* INSPECTION OF 30 E-MAILS

Counter-Defendant, Jeffrey Epstein ("Epstein"), moves[1] this Court for an *in camera* inspection of 30[2] e-mails identified on Epstein's March 2, 2018 Clerk's Trial Exhibit List and to find that no privilege applies to them. These e-mails directly contradict Edwards' sworn testimony and repeated misrepresentations before this Court. Edwards, an officer of this Court, previously disclosed all of these e-mails to another adversary, thereby eliminating any privilege or work product protection that ever could have been applicable to them, and then improperly withheld them from discovery by Epstein and what appears to be a deliberate concealment of them in a non-compliant privilege log, previously ruled by the Court to be legally deficient, based on false claims

[1]The original Motion was filed on March 5, 2018, but not ruled on before the March 9, 2018, appellate court stay. The parties further agreed to stay hearings on pending motions until mediation was completed. Additionally, The Honorable Donald W. Hafele's stated interest in first allowing the Show Cause proceedings before The Honorable Raymond B. Ray, United States Bankruptcy Court for the Southern District of Florida, to occur before this Court proceeded with this review. With trial approaching on December 4, 2018, this Court instructed Epstein to file this Motion and deliver the accompanying sealed Memorandum by November 9, 2018. Edwards was instructed to deliver a response sealed Memorandum by November 16, 2018.

[2]Epstein has reduced the original 47 e-mails for *in camera* review down to 30 e-mails.



of irrelevancy and attorney-client privilege and claims of work product that could no longer possibly be applicable under Florida law.[3] Following this Court's *in camera* review, Epstein seeks a ruling from this Court that these 30 e-mails must be unsealed and properly included on Epstein's Exhibit List.

PREFACE

The Bankruptcy Court, The Honorable Raymond B. Ray, entered an Order on October 29, 2018 (**Exhibit 1**), discharging the Order to Show Cause against Epstein in relation to the "disc" on which the e-mails were discovered. As of the time of this submission, Judge Ray has not yet determined whether Fowler White, Epstein's counsel at the time of the November 2010 Agreed Order (and from whom Link & Rockenbach, PA received the disc[4]), violated the Agreed Order. Edwards is hoping that this Court will refuse to conduct an *in camera* inspection because of a possible finding by Judge Ray that Fowler White negligently or inadvertently held the disc in its storage facility for some number of years. Even if Judge Ray makes such a determination, this Court should not excuse Edwards' (and Farmer Jaffe's) failure to produce all of these e-mails as they were required to do and represented they would in 2011.

Importantly, this Court has found that Link & Rockenbach, PA did nothing wrong relating to its discovery and use of the disc:

[3]Farmer Jaffe agreed to produce all work-product related to closed cases to Epstein's attorneys.

[4]At the bankruptcy hearing and for the first time, Epstein's counsel learned from Lilly Sanchez's testimony that Fowler White was given two discs from the Farmer Jaffe firm to create two sets of hard copy documents that were bate stamped. This uncontroverted testimony demonstrated that the "disc" was created for Special Master Carney and not for Fowler White or Epstein. The disc was made because, according to Lilly Sanchez, Special Master Carney did not want 27,542 bate stamped pages of documents. Rather, Special Master Carney wanted a searchable disc. It is still a mystery how and when the disc came back into Fowler White's possession after it was sent to Special Master Carney and no evidence has been presented to resolve that question definitively.

- "I'm not finding fault with anything you or Miss Rockenbach or Miss Campbell did. That's not the issue. You've done your job." (March 8, 2018, Aft. Tr. 59:1-4.)[5]

- "So I again want to make clear that I'm finding absolutely no fault with Mr. Link, Miss Rockenbach, Miss Campbell or anyone else from the Link and Rockenbach firm in terms of what they did, albeit in the manner in which they had to do it and the timing, unfortunately, of the matter from their perspective in having to do it ..." (March 8, 2018, Aft. Tr. 61:15-21.)

***IN CAMERA* REVIEW**

Epstein requests that the 30 e-mails remain unsealed for the duration of the *in camera* inspection and counsel for both parties be allowed to review and present argument as to each e-mail. This is the same protocol agreed to by Farmer Jaffe in 2011 when the Special Master was contemplating this same review. That is, Farmer Jaffe agreed to turn over work product materials except for materials related to new or ongoing cases conditioned on a "For Attorneys' Eyes Only" basis until such time as the Court overruled any privilege claim upon the Special Master's (or Court's) review with counsel present. (*See* **Exhibit 3.**)

During its *in camera* review, this Court must consider and determine:

1. The e-mails are directly relevant to the issues for trial and no *Binger*[6] "surprise in fact" exists regarding them;

2. If any work product protection existed, it was waived or excepted based on:

   a. Farmer Jaffe's express agreement to turn over all work product to Epstein's attorneys;
   b. Edwards' production to Razorback victims/adversaries;
   c. Edwards' issue injection; and
   d. Crime fraud exception;

3. The e-mails do not constitute attorney-client communications.

---

[5]Excerpts of the March 8, 2018, afternoon hearing transcript are attached s **Exhibit 2.**
[6]*Binger v. King Pest Control*, 401 So. 2d 1310 (Fla. 1981).

BACKGROUND

A. Discovery of Deliberately Concealed E-Mails

As this Court is well aware, in February 2018, Link & Rockenbach, PA discovered documents that were voluntarily produced years ago by Edwards to his potential adversaries at the time – the Razorback plaintiffs. These e-mails directly contradict Edwards' sworn testimony and positions taken by Edwards in this action. Importantly, the e-mails eviscerate Edwards' claim for emotional distress damages, and worse – they illustrate that Edwards provided suspect testimony in this action about his anxiety over being sued by Epstein. They also directly contradict Edwards' sworn testimony regarding interaction with Ponzi-schemer Scott Rothstein ("Rothstein") and the strength/weakness of Edwards' clients' damage claims against Epstein, both which have become critical factual issues in this case.

First and foremost, the e-mails have become highly relevant in light of Edwards' sworn testimony that Epstein's lawsuit has caused him daily anxiety (emotional damages and credibility). Next, the e-mails are direct evidence controverting factual claims made by Edwards that he argues disproves probable cause, such as his interaction with Rothstein on the Epstein cases and the known "weakness" of the tort claimants' damages. While the e-mails only became known to Epstein's current counsel earlier this year, Edwards has known of them from the time of their existence! Moreover, the e-mails were produced by Edwards approximately eight years ago to counsel for Razorback, Edwards' adversary at the time. Edwards, knowing how potentially damaging the e-mails are to him professionally, let alone their terminating effect on this lawsuit, has desperately taken multiple positions that Epstein's current counsel improperly obtained the e-mails (proven to be untrue), that none of the e-mails were ever produced (incorrect), and that they are all protected

subject to attorney-client privilege (false) and/or the work product doctrine (waived or broken by exceptions if ever applicable).

B. Edwards' Deceptively Concealed the E-Mails and Clearly Violated Rule 1.280(b)(6) as Previously Determined by the Court

Edwards is responsible for improperly withholding these undeniably relevant e-mails from Epstein for more than eight years after specifically agreeing to turn over all work product to Epstein's lawyers. Specifically, Farmer Jaffe agreed:

> [February 2, 2011] **All** work product materials **will be turned over to Plaintiff except for materials related to new or ongoing cases**, AND on the condition that they be produced "For Attorneys' Eyes Only. (**Exhibit 3.**)

Unfortunately, this promise to produce all work product was hollow. Although Farmer Jaffe did in fact turn over purported work product specifically relating to Edwards' three clients' cases against Epstein, which had then been settled in July 2010, it did not turn over the e-mails in question relating to those same cases. Further, in order to ensure that the e-mails would never see the light of the courtroom, Edwards concealed their existence by hiding them within a deceptively worded 1,607-entry, 159-page privilege log that this Court's predecessor, The Honorable David Crow, found to be insufficient on its face and not-compliant with the requirements of Florida Rule of Civil Procedure 1.280(b)(5)[7] and *TIG Ins. Corp. v. Johnson*, 799 So. 2d 339 (Fla. 4th DCA 2001).

Edwards has claimed that none of the documents on the disc that were listed on his privilege log had **ever** been produced. However, this is demonstrably inaccurate. Specifically, on May 7, 2012, Edwards produced 163 pages representing 89 documents identified on his 159-page privilege log. In addition, Edwards' counsel suggested that Link & Rockenbach received the evidence from

[7]Florida Rule of Civil Procedure 1.280 has been amended since the Court's Order and privilege claims are now addressed in subsection (6) of that Rule.

attorney William Scherer (Razorback's counsel). Although that is inaccurate, it demonstrates that any potential work-product protection has been waived by virtue of production to at least one other potentially adverse party in separate litigation.

C. The Truth and this Court's Process-Driven "Level Playing Field"

This Court has repeatedly expressed its intention to preserve the integrity of the judicial process and maintain a level playing field between the parties in order to ensure a fair trial. Now is the time for process and this balance to yield the truth.

Consistent with this Court's efforts to level the playing field by allowing Edwards to introduce certain evidence bearing on Epstein's criminal history, his non-prosecution agreement with the government, settlements with Edwards' three clients and the existence and settlement of other civil claims against Epstein, this Court must allow the jury to review these 30 e-mails which would allow a full evaluation of Edwards' absurdly false anxiety damages claim, his conduct and the true value of his clients' cases as known by Edwards. The e-mails reveal as a sham Edwards' efforts to disprove Epstein's probable cause for believing Edwards' unusual litigation tactics were designed for an improper purpose, and leave undisputed and intact the extrinsic evidence on which Epstein reasonably relied as probable cause for the original action.

ARGUMENT

A. The 30 E-mails are Relevant and Directly Controvert Edwards' Sworn Testimony and Repeated Misrepresentations to this Court

The 30 e-mails are all undeniably relevant to this case. They eviscerate Edwards' damages claim and directly controvert Edwards' denials under oath and repeated representations before this Court regarding the weakness of Edwards' clients' damages claims against Epstein, Edwards' association and interaction with Rothstein and the litigation tactics in which Edwards improperly engaged, and they destroy the overall credibility of Edwards' allegations against Epstein. These e-

mails are not only relevant and material, but make it impossible for Edwards to establish any damages at all or to satisfy his heavy burden to prove the absence of probable cause for Epstein to have filed suit against him.

Edwards claims that he has suffered and continues to suffer damages arising out of his "anxiety" from Epstein's Complaint that was filed more than eight years ago and dismissed six years ago because it: (a) falsely characterized Edwards' cases as "weak"; (b) indicated that Edwards knew or should have known of Rothstein's Ponzi scheme; and (c) alleged that Edwards engaged in litigation conduct to support the Ponzi scheme. As support for this assertion, Edwards sets up as the central issues (and issue injection) in the trial of his Counterclaim against Epstein: (a) the strength of his clients' cases against Epstein; (b) the lack of any association between Rothstein and either Edwards or Edwards' clients' cases against Epstein; and (c) the legitimacy of Edwards' litigation conduct in his clients' cases against Epstein.

Epstein is entitled to have the Court and jury consider these e-mails as the jury determines whether Epstein exceeded the wide latitude which the law confers on all plaintiffs "to use their best judgment in prosecuting . . . a lawsuit without fear of having to defend their actions in a subsequent civil action for misconduct." *Echevarria, McCalla, Raymer, Barrett & Frappier v. Cole*, 950 So. 2d 380, 384 (Fla. 2007). It is also crucial that these e-mails be available to the jury as they evaluate the factual issues that Edwards claims determine whether it was objectively reasonable or unreasonable to rely on the extrinsic evidence that Epstein proffers as probable cause.

B. **No Binger "Surprise in Fact" and Truth and Justice Requires the Courtroom's Light**

There is no *Binger* prejudice and truth and justice require admissibility of these 30 highly relevant, case-ending e-mails either authored or received by Edwards, and undeniably within Edwards' possession since 2009. Based on this, Edwards – an officer of the court, who took an oath to "never seek to mislead the judge or jury by any artifice or false statement of fact" - cannot claim "surprise."[8]

The decision before this Court is one of right and wrong, and as this Court has acknowledged its task – "What is the right thing to do" which allows the Court to "look in the mirror at the end of the day," and respond to one question: "Did I do the right thing by those who came before me..." – regardless of economic status or popularity of either party or his counsel. (11/2/18 Hearing Transcript, 88-89.) Edwards wrongly placed, and Edwards has advanced, an "attorney-client" label on the 30 e-mails with the intent that Epstein should never discover the existence of these devastatingly harmful documents, while at the same time allowing other adversaries access to these so called "privileged" e-mails.

Importantly, the attorney-client label is false because none of the 30 e-mails were to or from clients and none of the e-mails contain confidential information provided by Edwards' three clients. Further, any information about Edwards' clients' past was all publicly available (and generally known) and even testified about by those very clients. Edwards also knows that Farmer Jaffe agreed to produce work-product e-mails in 2011 and, in fact, did so, including asserted work-product e-mails relating to Edwards' three clients' cases. Edwards' hollow attorney-client privilege and work product assertions are now squarely challenged and must be rejected in favor of the truth. *See Loureiro v. State,* 133 So. 3d 948, 956 (Fla. 4th DCA 2013)("A trial must be a search for the truth.");

[8]*Oath of Admission to The Florida Bar,* https://webprod.floridabar.org/wp-content/uploads/2017/04/oath-of-admission-to-the-florida-bar-ada.pdf.

Katzman v. Rediron Fabrication, Inc., 76 So. 3d 1060, 1063 (Fla. 4th DCA 2011)("...jury can the search for truth and justice be accomplished").

Not only are the e-mails highly relevant and constitute no *Binger* "surprise in fact" to Edwards, as this Court has already glimpsed upon cursory review of the e-mails in March 2018, not a single one of the 30 e-mails are attorney-client privileged. Further, if any work product existed, it was either waived or is subject to a clear exception to such protection under the law. If this Court follows Edwards' lead, a ruling shielding the jury from case-eviscerating e-mails would result in reversible error and lead to a second trial.

Because these e-mails are case-ending or worse for Edwards, Edwards has attacked Epstein's counsel and derided the truth of these e-mails in an attempt to hide them from the light of the courtroom, but in the end, there it is: truth.

C. Edwards Expressly Waived Work Product Protection in 2011 and His Deceptive Concealment of the 30 E-Mails on a Legally Deficient Privilege Log Violated Florida Law and Court Orders

Edwards expressly, and on multiple occasions, waived work-product protections. In negotiating the preparation of the privilege log, on February 2, 2011, Farmer Jaffe informed Epstein's counsel and the Special Master that it would omit from the log any work product objections that related to closed cases:

> **All** work product materials **will be turned over to Plaintiff except for materials related to new or ongoing cases**, AND on the condition that they be produced "For Attorneys' Eyes Only. **(Exhibit 3.)**

Gary Farmer, Jr. told the Special Master he would then only list on the new privilege log work product materials for ***existing*** cases and attorney-client privilege materials. *Id.* Farmer confirmed this agreement more than once:

> [February 9, 2011] "We also have 2 more boxes that contain **work product materials** what we will turn over subject to the agreement that Plaintiff will

> not assert any privilege has been waived by turning them over now, and further subject to the agreement that they be produced 'For Attorneys' Eyes Only.'" **(Exhibit 4.)**
>
> [February 16, 2011] Farmer: "Do you still want to do the attorney's eyes only? Do you want to speed it up or not? **You'll get work-product stuff** if you agree to the attorney's-eyes only." Epstein's counsel confirmed their agreement. **(Exhibit 5.)**

This representation was significant. At the time Farmer made this representation to Epstein in 2011, the three cases Edwards had been litigating against Epstein while he was Rothstein's partner at Rothstein Rosenfeldt & Adler ("RRA") were closed and had long been settled (in **July 2010**). Thus, based on Farmer's representation, Edwards was obligated, as an officer of the Court, to have produced all e-mails reflecting work product pertaining to the three closed Epstein cases because they did not pertain to "new or ongoing cases." While at the time of the production Edwards had other clients who had claims against Epstein, those, too, have now long been settled[9], and none of those claims remain *pending against Epstein.*

In fact, Edwards did produce more than 5,000 pages as "attorneys' eyes only" in February 2011 (including asserted work product relating to the cases of his three clients that Edwards intends to feature in the prosecution of his malicious prosecution claim against Epstein). Epstein has now discovered that Edwards did not produce *select* items, and specifically withheld inculpatory e-mails pertaining to his closed cases against Epstein, despite his partner's representation to counsel and the Court (Special Master).[10] To the extent that the 30 e-mails identified for this Court relate to

[9]Edwards settled his last clients' claims against Epstein in August 2011.

[10]In anticipation of Edwards' response that some work-product documents relating to L.M. and E.W. were not produced because of some tangential privilege based on the pending Crimes Victims' Rights Act ("CVRA") action against the United States Government, this lacks merit. None of the subject e-mails are communications between the government and Edwards' clients or their counsel or implicate any issues relevant to the CVRA case. Importantly, other than filing a Notice of Change of Address in the CVRA action in April 2009 when Edwards joined RRA, *Edwards did nothing in that action while he was at RRA.* In fact, the first filing Edwards made in the CVRA action after April 2009

actual cases Edwards litigated against Epstein, they were closed cases. If work-product protection ever even arguably applied to them, the e-mails should have been turned over for review by Epstein's counsel pursuant to Farmer Jaffe's agreement. Moreover, because all of Edwards' clients' claims against Epstein have now settled, in reliance on Edwards' previous waiver and agreement to produce the same, there is simply no basis for them not to be subject to review by this Court and a determination that any work-product protection that may at one time have been available is no longer applicable as a result of Edwards' clear and irrefutable waiver. *See Jane Doe No. 1 v. United States*, 749 F.3d 999 (11th Cir. 2014)(held that Epstein's former counsel had waived the work-product privilege with respect to documents sought by Edwards' clients, after having voluntarily sent allegedly privileged correspondence to the United States during plea negotiations).

Moreover, this Court's conclusion that Edwards' waiver of any protection is further mandated by his subsequent deliberate concealment of the e-mails in question on a 159-page privilege log that was determined by the Court on May 7, 2012, to be legally deficient on its face and to have utterly failed to comply with the legal requirements of Florida Rule of Civil Procedure 1.280(b)(5) and *TIG Ins. Corp. v. Johnson*, 799 So. 2d 339 (Fla. 4th DCA 2001). (**Exhibit 7.**) It was through this device that Edwards prevented the e-mails from ever seeing the light of day despite Edwards' misrepresentations to Epstein's counsel that all e-mails qualifying as work product in closed cases against Epstein had been produced. While the e-mails remained concealed through Edwards' improper device, Edwards continued to prosecute his Counterclaim against Epstein based on the very issues directly refuted by e-mails Edwards concealed from existence. Edwards, who is

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was in September 2010 after the court administratively closed the case for inactivity – almost a year after Edwards left RRA. (*See* excerpt of CVRA Court Docket attached as **Exhibit 6.**)

both an officer of the court, a plaintiff and counsel of record for himself in this action, should not be rewarded for such unethical gamesmanship and violation of court rules.

On August 17, 2012, the Court vacated the May 7, 2012, Order, but did not relieve Edwards of the requirement to provide a new fully compliant privilege log. In fact, the Court's August 17, 2012, Order provides, in pertinent part:

> EDWARDS shall file a written response specifically addressing the production sought in Paragraph 13 of EPSTEIN's Motion to Compel and Amend Protective Order of March 9, 2012 as Ordered in this Court's April 10, 2012 Order. The response shall identify non-privileged responsive documents previously produced, shall be accompanied by all non-privileged responsive documents not previously produced, if any **and shall identify, in a proper privilege log as referenced in this Court's May 7, 2012 Order**, responsive documents withheld from production on the basis of any assertion of privilege. This response shall be filed within 10 days from the date of this Order.

(August 17, 2012, Order) (emphasis added) (**Exhibit 8**). Edwards failed to comply with the Court's Order and provide an accurate privilege log. His February 23, 2011 privilege log (**Exhibit 9**) is clearly invalid and the protections asserted thereunder must be deemed waived for any number of reasons, including Edwards' failure to comply with the Court's Order.

Because Edwards blatantly disregarded the Court's Order, as well as the requirements of Florida's Rules of Civil Procedure and the *TIG* case, the February 23, 2011 privilege log remains wholly deficient and worse – deliberately misleading. The privilege log misstates objections, improperly identifies or altogether excludes the required identities of the document authors and recipients, and its document descriptions are deceptively vague and misrepresent the true nature of the documents listed on the privilege log. Had Edwards ever provided a legally sufficient privilege log, Epstein would have been afforded the opportunity to identify as early as February 23, 2011, the improper assertions of attorney-client privilege, work-product protection and irrelevancy made by Edwards with respect to the 30 e-mails.

In light of Edwards' promise to turn "work-product" e-mails over coupled with his deliberately misleading and non-compliant privilege log and multiple instances of waiver regarding work product from closed cases, the Court need not make any further determinations other than to unseal the 30 e-mails and allow Epstein to use them at trial. Edwards' deceptive privilege log and subsequent disregard for the Court's Order mandating ("shall") a proper privilege log should not be rewarded by this Court, and requires a finding that Edwards has waived any claim of protection, particularly protection he has already waived or lost for a variety of other reasons discussed herein.

D. Edwards Waived Any Attorney-Client and Work-Product Protection by Voluntary Disclosure to a Clear Adversary in the *Razorback* Litigation

Additionally, Edwards' counsel conceded on March 8, 2018, that the e-mails were shared with the Conrad, Scherer law firm -- counsel for Razorback. (**Exhibit 2**, 15:1-16; 18:18-19:3). (*Also see* April 2011 communication between Edwards' counsel and Razorback's counsel, **Composite Exhibit 10.**) Clearly, Razorback sought their production to prove its allegations in the *Razorback* lawsuit that Rothstein used the three cases against Epstein, in part, to lure investors into the Ponzi scheme. Once Edwards provided the documents that he claims are privileged in this case (both attorney-client and work product) to Conrad, Scherer, an adversarial party's counsel, Edwards waived those privileges. *See* § 90.507, Fla. Stat.; *Delap v. State*, 440 So. 2d 1242, 1247 (1983). *See also Tucker v. State*, 484 So. 2d 1299, 1301 (Fla. 4th DCA 1986) ("The law is clear that once communications protected by the attorney-client privilege are voluntarily disclosed, the privilege is waived and **cannot be reclaimed**.") (emphasis added).

Recognizing his voluntary disclosure to *Razorback,* Edwards has defended against Epstein's claim of waiver by arguing "selective waiver" or "common interest." Edwards claimed that "Conrad & Scherer . . . entered into a joint prosecution agreement with Edwards' counsel, whereby both parties agreed to share information relative to their claims and/or defenses related to Scott

Rothstein without waiving privilege as to their communications or documents shared." Edwards' Supp. Resp. to Epstein's Mot. to Declare Relevance, July 26, 2018, at 14. This is a claim of "selective waiver"—that Edwards may waive privilege as to one recipient while maintaining it as to others. However, every court that has recently addressed the logic and viability of "selective waiver" has concluded that it fails as inconsistent with the purpose of the attorney-client privilege. *Permian Corp. v. U.S.*, 665 F.2d 1214, 1221 (D.C. Cir. 1981). In addition, "[o]nce a party has disclosed work product to an adversary, it waives the work product doctrine as to all other adversaries." *McMorgan & Co. v. First Cal. Mortg. Co.*, 931 F. Supp. 703 (N.D. Cal. 1996).

Case law from across the country demonstrates that the confidentiality agreement is of no merit because a litigant who chooses to disclose information claimed as confidential cannot have his cake and eat it too. Simply put, actions speak louder than words.

The general rule applies here. On March 8, 2018, Edwards' counsel, Jack Scarola, implied (incorrectly) that the e-mails were shared with Epstein's counsel by Mr. Scherer, counsel for Razorback. Thus, Edwards admits that he voluntarily furnished the e-mails to Mr. Scherer. Razorback sought these allegedly privileged communications to prove its allegations in the *Razorback* litigation that Rothstein used Edwards' three cases against Epstein *to lure investors into Rothstein's Ponzi scheme*. When Edwards produced these documents to Mr. Scherer, who was prosecuting an action against Rothstein and the firm, Edwards waived his claim to attorney-client privilege and work-product protection as to the whole world.[11] *See infra*.

Likewise, no "common interest" protection exists because the *Razorback* victims were outspokenly not aligned with Edwards. This is perhaps best illustrated in the hearing transcript before the United States Bankruptcy Court, Southern District of Florida, Case No. 09-34791-BKC-

[11]Unless Edwards disclosed the information relating to his clients without their consent, which is unfathomable, then Edwards' permitted disclosure waives it on their behalf as well.

RBR, in *In re Rothstein Rosenfeldt Adler, P.A.*, in which the following were statements made by William Scherer, Razorback's counsel:

- "[I]n November we filed a lawsuit in State Court and we alleged that as part of Mr. Rothstein and the firm, and the firm's employees, and maybe some of the firm's attorneys, conspired to use the Epstein/LM litigation in order to lure $13.5 million worth of my victims, my clients, into making investments in these phoney [sic] settlements." (17:7-14.)

- "In addition, as we have alleged, that Mr. Edwards and the firm put sensational allegations in the LM case that they knew were not true, in order to entice my clients into believing that Bill Clinton was on the airplane with Mr. Epstein and these young woman ..." (18:24-19:4.)

- "I can't conceive that Mr. Edwards and the predecessor law firm would have any standing to prepare privilege logs or anything else, given what I just told the Court. That would be like having the fox guard the hen house." (20:5-9.)

- "[The Complaint] names Rothstein. It does not name Mr. Edwards. It just names Rothstein, not the firm, and lays out the facts and says other people in the firm. We did not name them because we want to see the documents and see whether they had involvement." (22:3-8.)

- "I support the same position that [Epstein] has asked the Court, and that is to have the trustee deal with this, get these documents and deal with it with you, rather than allow the successor law firm (i.e., Edwards' law firm) to have them." (22:19-24.)

(8/4/10 Hearing Transcript, **Exhibit 11.**)

It really is that simple. Edwards' decision years ago (for whatever expedient or economic reason) to voluntarily give away the allegedly attorney-client privileged and work product e-mails to Conrad Scherer in the *Razorback* litigation triggered section 90.507. After taking steps inconsistent with the maintenance of privileges in confidential information, the privileges cannot be resurrected. They were waived.

E. Work-Product Protection Was Waived by Edwards' Issue Injection

Edwards has also waived attorney-client and work-product protections in the 30 e-mails under Florida's "at issue" doctrine (also known as "issue injection"). Related to the "at issue" doctrine is the "implied waiver" doctrine.

The "at issue" doctrine requires that a court find a waiver of attorney-client privilege. *Genovese v. Provident Life & Acc. Ins. Co.*, 74 So. 3d 1064 (Fla. 2011) (noting that privilege is waived where, for example, advice of counsel is raised as a defense and privileged communication is necessary to establish the defense). Under the "at issue" doctrine, "**[A] party cannot hide behind the shield of privilege to prevent an opponent from effectively challenging pertinent evidence.**" *Carles Const. Inc. v. Travelers Cas. & Sur. Co. of Am.*, 56 F. Supp. 3d 1259, 1273 n.40 (S.D. Fla. 2014) (emphasis added).

Here, the e-mails are vital and necessary to defend against one or more elements of Edwards' malicious prosecution claim. Among other things, the e-mails *directly relate* to the credibility of Edwards' claim for damages based on "anxiety" he has allegedly suffered every single day of his life since December 2009 when Epstein's lawsuit was filed, and continues to suffer through today. (Edwards, 11/10/17, 11:21-12:16; 21:14-22:8; 23:5-16.)[12] In addition, the e-mails directly debunk Edwards' assertion that he had no involvement with Rothstein, that he acted properly in the litigation and that there is nothing to demonstrate any weakness in Edwards' now-settled three clients' cases against Epstein. Repeatedly, through his own sworn testimony and repeated misrepresentations before the Court, Edwards has made these central issues in his malicious prosecution Counterclaim against Epstein. Edwards' own statements in the e-mails are directly relevant and go to the heart of Epstein's ability to demonstrate that Edwards had no

[12]Excerpts of Edwards' November 10, 2017, deposition transcript are attached as **Exhibit 12**.

damages, that any damages from anxiety as claimed by Edwards cannot be blamed on the allegations in the Complaint, but are attributable to Edwards' voluntary association with Rothstein and his own litigation activities in the Epstein cases, and that in the end, Edwards' claimed reasons that Epstein could not have *had* probable cause and acted with malice are plainly false. Therefore, they are critical to Epstein's defenses to Edwards' malicious prosecution claim and any work-product that may have applied to them must be deemed to have been waived.

F. The Crime-Fraud Exception Applies to Some E-mails

Under Florida law, there is no attorney-client privilege when the services of a lawyer are sought to enable or aid anyone to commit or plan to commit what the client knew was a crime or fraud. § 90.502(4)(a), Fla. Stat.; *see also* Fla. R. Prof'l Conduct 4-1.6 ("A lawyer must reveal confidential information to the extent the lawyer reasonably believes necessary . . . to prevent a client from committing a crime."). Following earlier precedent in *Parrott v. Wilson*, 707 F.2d 1262, 1271 (11th Cir. 1983), the Eleventh Circuit affirmed the part of the district court's order determining that the crime-fraud exception may be applied because an attorney's illegal or fraudulent conduct may, alone, overcome attorney work-product protection. *See Drummond Co., Inc. v. Conrad Scherer, LLP*, No. 2:11-cv-03695-RDP-TMP (11th Cir. March 23, 2018), at 23-24. **(Exhibit 13.)**

As further support for this crime-fraud argument and Rothstein's and Edwards' working together as alleged in Epstein's Complaint, Epstein directs the Court to his Memorandum filed under seal and the illustrative sampling of exhibits. This is more specifically explained in Epstein's Confidential Memorandum.

G. No Attorney-Client Privilege Exists

Farmer Jaffe, and now Edwards, misleadingly and repeatedly have advanced the "attorney-client privilege" label again and again in the hope that this Court will turn away and preclude the documents from jury consideration. Of the 1,607 claimed privilege items on Farmer Jaffe's privilege log, 938 entries were labeled as "irrelevant and not reasonably calculated to lead to the discovery of admissible evidence," while 994 entries were labeled as "work product and attorney-client privilege" (only 19 were communications with a client as determined by the description in the privilege log).

Despite Edwards' and Paul Cassell's (counsel for the Intervenors) protestations to the contrary, this Court can plainly see that not a single one of the 30 e-mails are attorney-client privileged communications between Edwards (or any other co-counsel) and Edwards' and Mr. Cassell's three tort clients (L.M., E.W. or Jane Doe). Rather, the majority of the documents are e-mails among attorneys and staff within RRA, with Mr. Cassell, and with media sources and do not qualify for that protection as codified in section 90.502 of the Florida Statutes. A quick read of the 30 e-mails makes it easy to understand both that the e-mails do not in any way reflect attorney-client communications and that Edwards and Mr. Cassell have very significant personal and professional reasons that they do not want the e-mails to see the light of the courtroom. *See Buckley v. Am. Constitutional Law Found., Inc.,* 525 U.S. 182, 223, 119 S. Ct. 636, 657, 142 L. Ed. 2d 599 (1999)("'Sunlight is said to be the best of disinfectants; electric light the most efficient policeman.'" *citing Buckley v. Valeo, supra,* at 67, and n. 80, 96 S.Ct. 612 (quoting L. Brandeis, Other People's Money 62 (1933)).

Under Florida's Evidence Code, "[a] client has a privilege to refuse to disclose, and to prevent any other person from disclosing, the contents of confidential communications when such

other person learned of the communications because they were made in the rendition of legal services to the client." § 90.502(2), Fla. Stat. (2017). A communication between lawyer and client is "confidential" 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.
2. Those reasonably necessary for the transmission of the communication.

Las Olas River House Condo. Ass'n, Inc. v. Lorh, LLC, 181 So. 3d 556, 557–58 (Fla. 4th DCA 2015); § 90.502(1)(c), Fla. Stat. (2017); *Witte v. Witte*, 126 So. 3d 1076 (Fla. 4th DCA 2012)(second exception applies to agents of the client such as a family member on behalf of an incapacitated relative). Not one of the 30 e-mails provides any basis to conclude that the documents constitute or reflect attorney-client communications in the rendition of legal services to a client. This Court's *in camera* review of the 30 e-mails will easily confirm that no attorney-client privilege applies.

CONCLUSION

Edwards, an officer of the court, the plaintiff in this case and counsel of record for himself, can claim no surprise for e-mails he authored, received or possessed since 2009 and deliberately and improperly concealed from disclosure to Epstein since February 2011. The 30 e-mails are relevant, directly controverting Edwards' sworn testimony and repeated misrepresentations before this Court, and clearly none of them are attorney-client communications. Additionally, Edwards has waived the right to assert attorney-client privilege and work-product doctrine with respect to the 30 e-mails for all reasons set forth above. This Court is equipped with the controlling law and equitable principles to perform the now substantially narrowed request for an *in camera* review of the sealed 30 e-mails, and to confirm the critically relevant nature and admissibility of these e-mails based on the absence or waiver of any attorney-client privilege or work-product protection. The *in*

camera review will confirm that Edwards expressly waived all privilege in February 2011 and such documents should be deemed to have been produced by him. As directed by this Court, a memorandum outlining Epstein's positions with respect to the specific e-mails that are the subject of this Motion is being provided to this Court separately under seal for its consideration.

WHEREFORE, Counter-Defendant, Jeffrey Epstein, moves for this Court for an *in camera* review of the 30 e-mails, with counsel present to be heard, and for a ruling that no privilege exists, or that waiver or other reasons preclude any potential protection and the 30 e-mails may be identified by Epstein on his Exhibit List and introduced at trial.

CERTIFICATE OF SERVICE

I certify that the foregoing document has been furnished to the attorneys listed on the Service List below on November 9, 2018, through the Court's e-filing portal pursuant to Florida Rule of Judicial Administration 2.516(b)(1).

LINK & ROCKENBACH, PA
1555 Palm Beach Lakes Boulevard, Suite 930
West Palm Beach, Florida 33401
(561) 847-4408; (561) 855-2891 [fax]

By: */s/ Scott J. Link*
Scott J. Link (FBN 602991)
Kara Berard Rockenbach (FBN 44903)
Primary: Scott@linkrocklaw.com
Primary: Kara@linkrocklaw.com
Secondary: Tina@linkrocklaw.com
Secondary: Troy@linkrocklaw.com

Counsel for Counter-Defendant Jeffrey Epstein

SERVICE LIST

Jack Scarola Karen E. Terry David P. Vitale, Jr. Searcy, Denny, Scarola, Barnhart & Shipley, P.A. 2139 Palm Beach Lakes Boulevard West Palm Beach, FL 33409 mep@searcylaw.com jsx@searcylaw.com dvitale@searcylaw.com scarolateam@searcylaw.com terryteam@searcylaw.com *Co-Counsel for Defendant/Counter-Plaintiff Bradley J. Edwards*	Philip M. Burlington Nichole J. Segal Burlington & Rockenbach, P.A. Courthouse Commons, Suite 350 444 West Railroad Avenue West Palm Beach, FL 33401 pmb@FLAppellateLaw.com njs@FLAppellateLaw.com kbt@FLAppellateLaw.com *Co-Counsel for Defendant/Counter-Plaintiff Bradley J. Edwards*
Bradley J. Edwards Edwards Pottinger LLC 425 N. Andrews Avenue, Suite 2 Fort Lauderdale, FL 33301-3268 brad@epllc.com *Co-Counsel for Defendant/Counter-Plaintiff Bradley J. Edwards*	Marc S. Nurik Law Offices of Marc S. Nurik 1075 Broken Sound Parkway N.W., Suite 102 Boca Raton, FL 33487-3541 marc@nuriklaw.com *Counsel for Defendant Scott Rothstein*
Jack A. Goldberger Atterbury, Goldberger & Weiss, P.A. 250 Australian Avenue S., Suite 1400 West Palm Beach, FL 33401 jgoldberger@agwpa.com smahoney@agwpa.com *Co-Counsel for Plaintiff/Counter-Defendant Jeffrey Epstein*	Paul Cassell 383 S. University Salt Lake City, UT 84112-0730 cassellp@law.utah.edu *Limited Intervenor Co-Counsel for L.M., E.W. and Jane Doe*
	Jay Howell Jay Howell & Associates 644 Cesery Blvd., Suite 250 Jacksonville, FL 32211 jay@jayhowell.com *Limited Intervenor Co-Counsel for L.M., E.W. and Jane Doe*

EXHIBITS

Ex.	Date	Description
1	10/29/18	*In re Rothstein Rosenfeldt Adler, P.A.*, U.S. Bankruptcy Court, Southern District of Florida, Case No. 09-34791, Order Discharging Order to Show Cause Against Jeffrey Epstein (D.E. 6508)
2	03/08/18	Afternoon Hearing Transcript Excerpt, pp. 15, 18, 19, 59, 61
3	02/02/11	E-mail from Gary Farmer to Robert Carney, Jack Scarola, Seth Lehrman, Lilly Sanchez, Joseph Ackerman and Brad Edwards
4	02/09/11	E-mail from Gary Farmer to Robert Carney, Joseph Ackerman, Lilly Sanchez, Jack Scarola, Christopher Knight, Seth Lehrman and Brad Edwards
5	02/16/11	Hearing Transcript Excerpt, p. 41
6	N/A	*Jane Doe v. United States*, U.S. District Court, Southern District of Florida, Case No. 9:08-cv-80736, Excerpt of Docket
7	05/07/12	Order on Jeffrey Epstein's Motion to Compel Production of Documents from Edwards and for Sanctions
8	08/17/12	Order on Outstanding Discovery Motions
9	02/23/11	Farmer Jaffe's Privilege Log
10	04/08/11 04/10/11	Communications between Conrad Scherer and Jack Scarola re production of documents
11	08/04/10	*In re Rothstein Rosenfeldt Adler, P.A.*, U.S. Bankruptcy Court, Southern District of Florida, Case No. 09-34791, Hearing Transcript
12	11/10/17	Bradley J. Edwards Deposition Transcript Excerpts, pp. 11-12, 21-23
13	03/23/18	*Drummond Company, Inc. v. Conrad & Scherer, LLP*, United States Court of Appeal, Case No. 16-11090, 15-90031, Opinion

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
FORT LAUDERDALE DIVISION
www.flsb.uscourts.gov

IN RE: CASE NO. 09-34791-RBR

ROTHSTEIN ROSENFELDT ADLER, P.A., CHAPTER 11

Debtor.
_____/

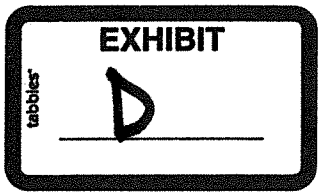
SCOTT J. LINK'S SWORN DECLARATION OF FACT

1. My name is Scott Jeffrey Link and I am a founding partner of the law firm of Link & Rockenbach, PA. I have been a member of the Florida Bar since 1986 and I have been a Board Certified Specialist in Business Litigation by the Florida Bar since 1999. I currently represent Jeffrey Epstein, the Plaintiff and Counter-Defendant in the lawsuit styled *Epstein v. Rothstein, Edwards and L.M.*, No. 2009CA040800XXXXMBAG pending before the Fifteenth Judicial Circuit in and for Palm Beach County, Florida (the "state court proceeding"), and in these show cause proceedings.

2. In November 2017, Epstein retained Link & Rockenbach to represent him in the state court proceeding. As part of my due diligence in representing Epstein, I learned that one of the firms that represented him, through May 2012, was Fowler White Burnett, P.A. ("Fowler White"). My law firm contacted Epstein's former attorneys, including Fowler White, to review their files.

3. When Link & Rockenbach appeared in the state court proceeding the only documents it had received were from Epstein's immediate former counsel (not Fowler White). This set of documents contained a subset of documents produced on May 7, 2012, which contained 89 documents (163 pages), 84 of which were identified on Farmer, Jaffe, Weissing, Edwards, Fistos & Lehrman, P.L.'s ("Farmer Jaffe") February 23, 2011 privilege log. The May 7, 2012 production had been used in the state court proceeding, including as evidence in summary judgment filings. I also learned that there had been testimony in the state court proceeding by Epstein's opponent, Bradley Edwards, stating that he had reviewed 26,000 pages of e-mails and produced them to Epstein.

4. On January 10, 2018, I traveled to Fowler White's office in Miami, Florida, to review its files associated with the state court proceeding. There, I observed approximately thirty-six boxes of files related to the case. However, representatives of Fowler White informed me that Fowler White was not willing to release its boxes. Therefore, with the assistance of my paralegal, Tina Campbell, I flagged items for Fowler White to reproduce and provide to my firm.



5. A compact disc ("CD") labeled "Epstein Bate Stamp" was in one of the boxes. This CD was flagged for reproduction, but not reviewed at that time.

6. On February 1, 2018, Link & Rockenbach received three boxes from Fowler White containing copies of the items flagged for reproduction.

7. On February 25, 2018, Link & Rockenbach began to review the CD. The CD contained 27,542 pages of e-mails that were consecutively Bates stamped and had no confidential, privilege or watermark designations. There was also no prefix indicating who produced the documents.

8. Link & Rockenbach reviewed approximately 5,000 pages of the 27,542 pages contained on the CD.

9. From the approximately 5,000 pages reviewed, I distilled the relevant and material items to Epstein's defense to numerous e-mails. Upon discovery of this evidence, I decided to prepare an Appendix in Support of Epstein's Response in Opposition to Edwards' Second Supplement to Motion in Limine Addressing Scope of Admissible Evidence, and a newly disclosed trial exhibit list.

10. Before filing the Appendix, Epstein's current lawyers reviewed the state court's and bankruptcy court's files for Confidentiality Stipulations or Orders, searched former counsels' records, spoke with former counsel from Fowler White, and asked Edwards' counsel (David Vitale), if he was aware of any confidentiality orders that would govern the use of exhibits at trial. I found reference to confidentiality discussions in 2011 relating to how documents would be produced, but no Confidentiality Agreement was in effect. While I recognized that some documents were listed on a Farmer Jaffe's privilege log, the documents we already had in our possession and were used in summary judgment filings were also listed on the privilege log. As such, I did not believe we were in possession of any documents that had not been produced in the case. Moreover, the number of pages on the CD (27,542), approximately corresponded with the number of pages that Edwards had testified were produced (26,000).

11. With that Appendix, I filed an illustrative sampling of e-mails obtained from the CD, and provided the documents, and others, to Edwards' counsel as supplemental trial exhibit production.

12. On Sunday, March 4, 2018, Edwards' counsel wrote to me via e-mail and claimed that I had obtained all 27,542 pages of e-mails improperly and unethically, and requested that Link & Rockenbach immediately destroy all such e-mails in its possession and remove them from the Court docket.

13. At this point, because whether I had complied with my ethical obligations as an attorney had been called into question, my law firm engaged a former ethics director of the Florida Bar, Timothy Chinaris, to review the circumstances under which Link & Rockenbach discovered the CD and its contents, and its subsequent actions. Mr. Chinaris opined that

the documents (CD) in question were not wrongfully obtained or retained by Link & Rockenbach, that Link & Rockenbach did nothing wrong, and acted in an ethical and proper manner in bringing the matter to the state court's attention. A copy of Mr. Chinaris' Affidavit is attached as **Exhibit A.**

14. I attended a hearing in the state court proceeding before The Honorable Donald W. Hafele on March 8, 2018, involving these issues, including the circumstances in which Fowler White obtained or retained the CD, Link & Rockenbach's receipt of the documents on the CD, Epstein's ability to use the materials in the state court proceeding moving forward and whether further confidentiality measures were needed. Judge Hafele commented that the state court found no fault with Link & Rockenbach in terms of how it obtained the CD, or in any other action taken by Link & Rockenbach in furtherance of its defense of Epstein.

15. Moreover, Judge Hafele ordered that all counsel who represent Epstein are subject to directives of the state court concerning confidentiality, sealing and non-dissemination of materials derived from the CD that Edwards claims are privileged. Specifically, Judge Hafele instructed Link & Rockenbach not to further disseminate any documents contained on the CD that Edwards claims are privileged, to file the CD under seal and to file the stricken exhibits from the CD under seal. I have complied with those directions from Judge Hafele.

16. I have not made any further dissemination of the documents, including those identified on the Appendix which had been filed in the state court proceeding, the disclosed trial exhibits, or any other documents from the CD that Farmer Jaffe, Edwards and the Intervenors asserted a privilege over.

17. On March 6, 2018, on behalf of Epstein, I did not object to the Intervenors' Motion to Seal Court Records Until the Court Makes a Determination on How the Documents Shall be Treated filed in the state court proceeding.

18. On March 10, 11 and 12, 2018, I worked diligently with Edwards' counsel, the duty judge, and later, Judge Hafele, to ultimately obtain an order sealing the two docket entries which had been open to the public for over 48 hours.

19. Link & Rockenbach destroyed its paper copy of the Redacted Appendix that was filed in the state court proceeding and deleted the electronic version of it from its system.

20. Link & Rockenbach placed the Unredacted Appendix that had been served, but not filed, in a sealed box that has been maintained in its West Palm Beach office, unopened, for appellate purposes.

21. Link & Rockenbach placed an exhibit sticker on the trial exhibits that were newly disclosed on Epstein's March 5, 2018 Clerk's Trial Exhibit List which were printed from the CD and placed them in a sealed envelopes. On March 21, 2018, Link & Rockenbach, on Epstein's behalf, moved to make the records confidential. On April 6, 2018, the state court entered an Agreed Order Directing Clerk to Seal Filings and those records have now been filed

under seal. Link & Rockenbach retained a duplicate set of the exhibits in a sealed envelope in a sealed box maintained in its offices for appellate purposes.

22. Link & Rockenbach placed Fowler White's original CD in a sealed envelope and will maintain it with Fowler White's original records at Link & Rockenbach's offices until further rulings by the state court.

23. Excepting the items identified above which are maintained in a sealed box, Link & Rockenbach has destroyed all hard copies of the documents it had reproduced from the CD obtained from Fowler White.

24. Link & Rockenbach deleted the electronic duplicate of the CD and the electronic version of the alleged privileged exhibits from Dropbox, the online service by which those documents were transmitted to counsel of record. Link & Rockenbach also began deleting saved electronic documents from its computer system, and planned to work with IT personnel to remove copies of any documents in which Edwards and the Intervenors claimed a privileged from its e-mail servers. However, in an abundance of caution, and in light of Edwards' and the Intervenors' objections to the deletion of electronic documents, Link & Rockenbach has not taken further steps to delete electronic documents.

25. Epstein believes that Edwards waived any privilege claims over the entire CD and he has asked the state court judge to conduct an *in camera* review of the 47 exhibits Edwards claims are privileged and make a determination on relevance, privilege and waiver. Those issues are currently set for hearing in the state court proceeding on August 22 and 23, 2018.

Executed in West Palm Beach, Florida, August 14, 2018. I declare under penalty of perjury that the foregoing is true and correct.

Scott J. Link, Esq.

EXHIBIT A

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.

_____/

AFFIDAVIT OF TIMOTHY P. CHINARIS

BEFORE ME personally appeared TIMOTHY P. CHINARIS, affiant, and, being duly sworn, did say and aver the following:

PROFESSIONAL BACKGROUND AND QUALIFICATIONS

1. My name is Timothy P. Chinaris.

2. I am a resident of the State of Tennessee, residing in Nolensville, Tennessee.

3. I am an attorney licensed in the State of Florida and a member in good standing of The Florida Bar.

4. My professional qualifications and experience are set forth in my curriculum vitae, which is attached hereto and incorporated herein by reference. The contents of said curriculum vitae are true and accurate.

5. I was employed by The Florida Bar in Tallahassee, Florida from August 1986 to April 1997. From 1986 to 1989, my position was Assistant Ethics Counsel. From December 1989 to April 1997, I was Ethics Director of The Florida Bar.

6. As Ethics Director, I was responsible for operation of The Florida Bar's Ethics Department. The Ethics Department employs licensed Florida attorneys whose duties include providing oral and

written advisory opinions to practicing Florida Bar members on ethics-related topics. The Ethics Department annually renders thousands of ethics and advertising opinions to Florida lawyers.

7. As Ethics Director of The Florida Bar, my responsibilities included: hiring, training, and supervising the Ethics Department's attorneys; providing oral and written advisory ethics opinions to practicing attorneys; advising The Florida Bar Board of Governors on issues of professional ethics; serving as counsel to ethics-related Florida Bar committees; consulting with attorneys in The Florida Bar's Lawyer Regulation Department, Unlicensed Practice of Law Department, and Center for Professionalism regarding cases, advisory opinions, and programs; speaking to local, state, and national groups on matters of legal ethics; and writing about professional responsibility matters for various publications.

8. During my employment with The Florida Bar, I personally rendered thousands of advisory ethics opinions to practicing Florida attorneys on a wide variety of matters concerning legal ethics ad professional responsibility.

9. From April 1997 to September 2000, I was employed by Florida Coastal School of Law in Jacksonville, Florida as Associate Professor of Law and Associate Dean for Information Resources and Technology. My duties included teaching courses in legal ethics.

10. From September 2000 to June 2005 I was employed by Appalachian School of Law in Grundy, Virginia as Associate Professor of Law and Assistant Dean of Information Resources. My duties included teaching courses in legal ethics.

11. From June 2005 through March 2014 I was employed by Faulkner University's Jones School of Law in Montgomery, Alabama, as Professor of Law. My duties included teaching courses in legal ethics, as well as holding administrative positions (Associate Dean for Academic Affairs from 2011 to 2014; Associate Dean for Information Resources from 2005 to 2012).

12. Since April 2014 I have been employed by Belmont University College of Law in Nashville, Tennessee, as Professor of Law and Associate Dean for Academic Affairs. My duties include teaching courses in legal ethics, as well as administering the law school's academic program.

13. During my employment as Florida Bar Ethics Director or since leaving the Bar's employ, I have: advised lawyers on issues relating to various aspects of legal ethics, including confidentiality and duties regarding receipt of potentially confidential documents; advised lawyers and others on unlicensed practice of law issues; advised lawyers on legal malpractice issues; represented lawyers in various professional responsibility matters, including Florida Bar disciplinary cases; and consulted and testified as an expert on various legal ethics and professional responsibility issues, including in Florida Bar disciplinary cases.

14. I am a member of the Professional Ethics Committee of The Florida Bar, having served on that Committee from 1997 to 2003, from 2006 to 2012, and from 2017-present. I chaired the Professional Ethics Committee from 2002 to 2003. I am a member of the Florida Bar Standing Committee on Professionalism, and chaired that Committee from 2016-2017. I have twice served

as President of The Florida Bar Out of State Division. I previously served as Vice-chair of The Florida Bar Standing Committee on the Unlicensed Practice of Law, and as a member of The Florida Bar Special Committee to Review the ABA Model Rules 2002, The Florida Bar Vision 2016 Commission and The Florida Bar Attorney-Client Privilege Task Force. I am or have been a member of state bar rules or unauthorized practice of law committees in Alabama and Virginia.

15. I regularly write and speak on legal ethics topics. I developed and maintain the legal ethics website "sunEthics.com" (http://www.sunethics.com). I co-authored the treatise *Florida Legal Malpractice and Attorney Ethics*.

16. I have consulted and testified in state and federal court matters, arbitration proceedings, and Florida Bar disciplinary matters as an expert witness on a variety of professional responsibility issues, including confidentiality and and duties regarding receipt of potentially confidential documents, conflicts of interest, disqualification, attorney's fees, legal malpractice, and unauthorized practice of law.

17. I consult with and represent practicing attorneys and others regarding issues of professional responsibility and legal ethics.

MATERIALS REVIEWED

18. In connection with this matter, I have spoken to Scott Link and Kara Rockenbach of Link & Rockenbach, P.A., counsel for Mr. Epstein in this matter, and reviewed documents provided to me by the law firm of Link & Rockenbach, P.A., including but not limited to: Plaintiff/Counter-Defendant Jeffrey Epstein's Motion for Court to Declare Relevance and Non-Privileged Nature of Documents and Request for Additional Limited Discovery, Evidentiary Hearing and Appointment of Special Master, with attachments ("Motion for Court to Declare"); and Plaintiff/Counter-Defendant Jeffrey Epstein's Notice of No Objection to Attorney Paul Cassell, on Behalf of L.M., E.W., and Jane Doe, or Defendant/Counter-Plaintiff Bradley J. Edwards Moving to Seal Court Records Until the Court Makes a Determination on How the Documents Shall Be Treated ("Notice of No Objection"). Additionally, I have reviewed relevant Rules of Professional Conduct and ethics opinions.

OPERATIVE FACTS

19. Paragraphs 20. through 28. summarize the operative facts, as I understand them, that I have considered in forming my opinions.

20. Plaintiff/Counter-Defendant Jeffrey Epstein has been represented by various counsel in the course of this case. Mr. Epstein's current counsel, Link & Rockenbach, P.A., appeared in this case on November 1, 2017.

21. In the course of its preparation, Link & Rockenbach contacted Epstein's prior counsel, Fowler White Burnett, P.A. ("Fowler White"), and requested file materials relating to this case. Fowler White had 36 file boxes on this case at its Miami office. Fowler White was not willing to

release the boxes and, accordingly, Link & Rockenbach, through Scott Link and paralegal Tina Campbell, flagged items to be copied. Included within the 36 boxes was a disc marked "Epstein Bate Stamp," which Link & Rockenbach flagged for copying.

22. Around February 1, 2018, Link & Rockenbach received 3 boxes from Fowler White, which contained the items that had been flagged for copying. Link & Rockenbach's paralegal assigned to the case, Tina Campbell, was on vacation when the boxes arrived. When Ms. Campbell returned to the office on February 12, 2018, she started reviewing the materials. Mr. Link and Ms. Rockenbach did not begin reviewing the documents on the disc marked "Epstein Bate Stamp" until the week of February 26, 2018.

23. The "Epstein Bate Stamp" disc contains more than 27,000 Bates-stamped pages, with no confidentiality designations. There was no cover letter or other designation of confidentiality. Some of the documents had been marked as exhibits.

24. Approximately 25,000-26,000 documents were produced by Mr. Edwards to Mr. Epstein as non-privileged documents. Mr. Edwards testified regarding production at his deposition in 2013, stating that the documents had been turned over. Mr. Link and Ms. Rockenbach reasonably believed that Edwards' testimony related to the documents on the "Epstein Bate Stamp" disc.

25. Mr. Edwards also produced documents to the Conrad & Scherer law firm in other litigation (*Razorback*), which Mr. Link and Ms. Rockenbach reasonably believed were produced without a claim of confidentiality.

26. Upon reviewing documents on the "Epstein Bate Stamp" disc, it appeared to Mr. Link and Ms. Rockenbach that some of those documents contained information that is extremely relevant to issues in this case and may contradict testimony and positions taken in the case by the opposing party.

27. Before filing the Motion for Court to Declare, Mr. Link and Ms. Rockenbach reviewed the court files in this case and in the bankruptcy proceeding involving the Rothstein Rosenfeldt Adler firm, asked Mr. Edwards' counsel whether there were any confidentiality orders concerning trial exhibits, reviewed Mr. Edwards' testimony regarding document production, asked Fowler White's general counsel for copies of any relevant confidentiality orders or stipulations, spoke with Fowler White attorneys, and reviewed the 36 boxes a second time.

28. When filing the Motion for Court to Declare, the identities of potentially sensitive individuals who are represented by attorney Paul Cassell were redacted. Mr. Link and Ms. Rockenbach have filed the Notice of No Objection to show that they will not object if Mr. Cassell seeks to have the court seal this portion of the file.

MY OPINIONS IN THIS MATTER

29. As described more fully below, it is my opinion that Mr. Link and Ms. Rockenbach have acted in an ethically proper manner in this case regarding the documents in question.

30. It is my opinion that the documents in question were not inadvertently provided to or wrongfully obtained by Mr. Link and Ms. Rockenbach.

a. The documents were on a disc labeled "Epstein Bate Stamp" that was obtained in the ordinary course of trial preparation by Link & Rockenbach from their client's prior counsel, the respected firm of Fowler White.

b. It reasonably appeared to Mr. Link and Ms. Rockebach that these documents had been produced to prior counsel and were not the subject of a confidentiality agreement or order.

c. For purposes of a lawyer's ethical obligations, a document is inadvertently provided "when it is accidentally transmitted, such as when an e-mail or letter is misaddressed or a document or electronically stored information is accidentally included with information that was intentionally transmitted." Comment, Rule 4-4.4, Rules Regulating The Florida Bar. Under the circumstances, nothing reasonably suggested to Mr. Link and Ms. Rockenbach that the documents were inadvertently provided or that they had been wrongfully obtained.

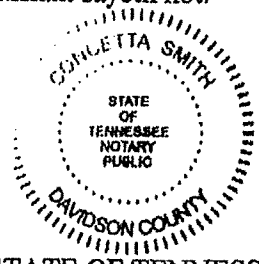
31. It is my opinion that Mr. Link and Ms. Rockenbach acted in an ethically proper manner by bringing the documents in question to the court's attention.

a. Even if the documents had been obtained as a result of inadvertence (which, in my opinion, is not the situation here), the ethical obligation of the recipient lawyers would be a limited one: to bring the matter to the attention of opposing counsel. See Rule 4-4.(b), Rules Regulating The Florida Bar; Florida Ethics Opinion 93-3. Mr. Link and Ms. Rockenbach have done that. A similar, limited response by recipient lawyers is required when they obtain documents that have wrongfully come into a client's possession (which, in my opinion, is not the situation here). See Florida Ethics Opinion 07-1.

b. Further, even in inadvertent disclosure situations, a lawyer who believes that any privilege relating to the documents has been waived or is otherwise inapplicable acts in an ethically appropriate manner by seeking direction from the court on those questions. See Comment, Rule 4-4.4, Rules Regulating The Florida Bar ("Whether the lawyer is required to take additional steps, such as returning the document or electronically stored information, is a matter of law beyond the scope of these rules, as is the question of whether the privileged status of a document or electronically stored information has been waived."). That is what Mr. Link and Ms. Rockenbach have done.

c. Finally, lawyers for all parties have an ethical obligation not to knowingly use or permit the use of improper testimony or other evidence in a court proceeding. See Rule 4-3.3, Rules Regulating The Florida Bar. By bringing this matter to the court's attention, Mr. Link and Ms. Rockenbach have shown proper respect for the court and for the principles underlying Rule 4-3.3.

Further affiant sayeth not.



TIMOTHY P. CHINARIS

STATE OF TENNESSEE

COUNTY OF DAVIDSON

The foregoing instrument was acknowledged before me this 7th day of March 2018 by TIMOTHY P. CHINARIS, who is personally known to me or who has produced valid identification and who did take an oath.

NOTARY

Commission Expires: 11/5/18

TIMOTHY P. CHINARIS

Post Office Box 120186
Nashville, Tennessee 37212
(615) 460-8264

EDUCATION

M.S. in Library and Information Studies, Florida State University, 1996

J.D. With Honors, University of Texas at Austin, 1984

B.S. Cum Laude in Business Administration, Florida State University, 1977

EMPLOYMENT

Associate Dean for Academic Affairs and Professor of Law (2014-Present),
Belmont University College of Law Nashville, Tennessee

Assist law school dean with administration of academic program, including: planning and scheduling course offerings; making teaching assignments; hiring adjunct instructors; overseeing exam administration and grade reporting; administering academic counseling, dismissals, leaves of absence, and transfers; assisting with new student orientation and new faculty orientation; and preparing statistics for and submissions to accrediting organizations. Additional responsibilities include teaching (legal ethics, insurance law, other subjects), committee service, publishing, and speaking.

Associate Dean for Academic Affairs (2011-2014) **and Professor of Law** (2005-2014),
Faulkner University, Jones School of Law Montgomery, Alabama

Assisted law school dean with administration of academic program. Taught courses in legal ethics, insurance law, and antitrust law.

Associate Dean for Information Resources (2005-2012) **and Professor of Law** (2005-2014),
Faulkner University, Jones School of Law Montgomery, Alabama

Directed law school information resources operations. Taught courses in legal ethics and other subjects.

Assistant Dean of Information Resources and Associate Professor of Law,
Appalachian School of Law Grundy, Virginia 2000-2005

Directed law school library and information resources operations. Taught courses in legal ethics, criminal procedure, law office practice, and legal process. Faculty responsibilities included chairing and serving on various committees.

Associate Dean, Information Resources and Technology and Associate Professor of Law, Florida Coastal School of Law Jacksonville, Florida 1998-2000

Directed all law school computing, instructional technology, telecommunications, and library operations. Taught courses in legal ethics. Faculty responsibilities included committee service and advising the school's law review.

Director of Library and Technology Center and Assistant Professor of Law, Florida Coastal School of Law Jacksonville, Florida 1997-1998

Directed library operations. Taught courses in legal ethics.

Ethics Director, The Florida Bar Tallahassee, Florida 1989-1997

Director of program that provided advisory opinions to Florida lawyers on legal ethics and advertising issues. Duties included: hiring, training, and supervising staff attorneys; speaking to local, state, and national groups on professional responsibility issues; advising the Bar's Board of Governors and Bar committees; and writing for legal publications.

Assistant Ethics Counsel, The Florida Bar Tallahassee, Florida 1986-1989

Duties included providing written and oral advisory opinions to Florida lawyers on legal ethics, professional responsibility, and lawyer advertising issues, speaking to various groups, and writing articles on professional responsibility topics.

Godwin & Carlton, P.C. Dallas, Texas 1986

Associate in commercial litigation section of civil practice law firm.

Texas Court of Appeals Dallas, Texas 1985

Research Attorney for Justices Annette Stewart and Ted M. Akin, Fifth Judicial District Court of Appeals. The 13-justice court was the largest appellate court in Texas.

Texas Court of Appeals Dallas, Texas 1984

Briefing Attorney for Justice Ted M. Akin, Fifth Judicial District Court of Appeals.

Unisys Corporation Tallahassee, Florida and Dallas, Texas 1978-81

Branch Financial Manager for worldwide computer equipment and software company.

SELECTED PUBLICATIONS

Author of legal ethics web site "sunEthics.com" (www.sunethics.com).

FLORIDA LEGAL ETHICS (West Academic Publishing, forthcoming 2020) (with Robert Jarvis).

FLORIDA LEGAL MALPRACTICE AND ATTORNEY ETHICS (American Legal Media, 2017) (with Warren Trazenfeld and Robert Jarvis).

We Are Who We Admit: The Need to Harmonize Law School Admission and Professionalism Processes with Bar Admission Standards, 31 MISSISSIPPI COLLEGE LAW REVIEW 43 (2012).

"New Directions in Professionalism," report prepared for the Florida Bar Center for Professionalism, August 2009.

FLORIDA ETHICS GUIDE FOR LEGAL ASSISTANTS AND ATTORNEYS WHO UTILIZE LEGAL ASSISTANTS (4th ed., Fla. Bar Continuing Legal Education, 2006).

Even Judges Don't Know Everything: A Call for a Presumption of Admissibility for Expert Witness Testimony in Lawyer Disciplinary Proceedings, 36 ST. MARY'S LAW JOURNAL 825 (2005).

More Than the Camel's Nose: The Sarbanes-Oxley Act as Bad News for Lawyers, Clients, and the Public, 31 OHIO NORTHERN UNIVERSITY LAW REVIEW 359 (2005).

Chapter on "Ethics, Professionalism, and Discovery" in VIRGINIA DISCOVERY, primarily authored by Jeffrey Kinsler (West Publishing 2005).

Primary drafter, Florida Bar lawyer advertising rules (1999 revision).

Florida Professional Responsibility in 1999: The Rules of the Game, 24 NOVA LAW REVIEW 199 (Fall 1999), co-authored with Elizabeth Clark Tarbert.

Professional Responsibility: 1998 Survey of Florida Law, 23 NOVA LAW REVIEW 161 (Fall 1998), co-authored with Elizabeth Clark Tarbert.

The Ethics of Ethics Consultation: The Consulted Lawyer's Perspective, THE PROFESSIONAL LAWYER, 1997 Symposium Issue.

Florida Professional Responsibility Law in 1997, 22 NOVA LAW REVIEW 215 (Fall 1997), co-authored with Elizabeth Clark Tarbert.

Professional Responsibility: 1996 Survey of Florida Law, 21 NOVA LAW REVIEW 231 (Fall 1996).

Professional Responsibility in Florida: The Year in Review, 1995, 20 NOVA LAW REVIEW 223 (Fall 1995).

"Ethics As Law: High-Impact Teaching of Legal Ethics," featured on the front page of *law.com*, March 6, 2001.

Answers to Frequently-Asked Ethics Questions, 65 FLORIDA BAR JOURNAL 49 (January 1991).

Contributing Author, FLORIDA LEGAL ETHICS (1992), and periodic supplements.

PROFESSIONAL ACTIVITIES

Admitted to Practice Law in Texas (1984), Florida (1986), Alabama (2009), and Tennessee (2014)
Admitted to the Bar of the United States Supreme Court (2011)
Admitted to the U.S. District Court, Southern District of Florida (2016)
Florida Bar Professional Ethics Committee (1997-2003; 2006-12; 2017-Present) (Chair, 2002-2003)
Florida Bar Committee on Professionalism (1999-2000; 2013-Present) (Chair, 2016-2017)
Florida Supreme Court Commission on Professionalism (2016-2017)
Special Consultant to Florida Bar Center for Professionalism (2008-2009)
Trustee, Florida Supreme Court Historical Society (2013-Present) (Exec. Comm., 2014-Present)
Florida Bar Out of State Division Exec. Council (2005-Present) (President, 2007-08 & 2014-15)
Florida Bar Vision 2016 Commission (2013-2016)
Florida Bar Law Office Mgmt. Assistance Service Adv. Bd. (2007-2013) (Chair, 2011–2013)
Florida Bar Attorney-Client Privilege Task Force (2006-2009) (Chair, Ethics Subcommittee)
Florida Bar Special Committee on Website Advertising Rules (2005-2007)
Florida Bar Special Committee to Review ABA Ethics 2000 Model Rules (2002-2005)
Florida Bar Unlicensed Practice of Law Committee (2003-2006) (Vice-chair, 2005-2006)
Florida Bar Continuing Legal Education Committee (2002-2003; 2006-2009; 2016-Present)
Florida Bar Prepaid Legal Services Committee (2004-2007)
Florida Bar Law Related Education Committee (2001-2004)
Tennessee Bar Assn. Ethics and Professional Responsibility Committee (2014-Present)
Tennessee Bar Assn. General Practice, Solo, and Small Firm Section Exec. Council (2017-Present)
Tennessee Bar Assn. Attorney Well-Being Committee (2017-Present)
Commissioner, State of Alabama Ethics Commission (2013-2014)
Alabama State Bar Unauthorized Practice of Law Committee (2007-Present)
Alabama State Bar Lawyer Referral Board of Trustees Committee (2017-Present)
Alabama State Bar Non-resident Members Section (Chair, 2016-17; Exec. Council, 2016-Present)
Alabama State Bar Non-resident Lawyers Task Force (Chair, 2015-2016)
Alabama State Bar Disciplinary Rules and Enforcement Committee (2011-2014) (Chair, 2013-14)
Virginia State Bar Unauthorized Practice of Law Committee (2003-2005)
Virginia State Bar Multi-Jurisdictional Practice of Law Task Force (2004-2005)
Association of Professional Responsibility Lawyers (1991-Present)

ACADEMIC PRESENTATIONS

Presented "The Path to Lawyer Well-Being and its Ethical Implications" at the Belmont University College of Law Seminar in Nashville, Tennessee, in December 2017.

Spoke on "New Issues in Lawyer Advertising and Marketing" at the ABA National Conference on Professional Responsibility in Memphis, Tennessee in June 2011.

Presented "New Directions in Professionalism" to the Florida Bar Supreme Court Commission on Professionalism at Tallahassee, Florida in November 2009.

Presented "Pioneering with Professionalism: The Journey Begins with Ethics" at the Annual Meeting of the American Association of Law Libraries (AALL) in St. Louis, Missouri in July 2006.
Spoke on "Legal Ethics and the Voting Rights Act of 1965" at a symposium sponsored by Faulkner University, Jones School of Law, Montgomery, Alabama in September 2005.

Presented "Professionalism Begins with Ethics" at the Annual Meeting of the Southeastern Association of Law Libraries (SEAALL) in Montgomery, Alabama in April 2005.

Spoke on "Lawyer Advertising: Positive or Negative?" at the Pikeville, Kentucky College Conference on Ethics in April 2005.

Presented "The Sarbanes-Oxley as Bad News for Lawyers, Clients, and the Public" at the Ohio Northern University Law Review Symposium in Ada, Ohio in March 2005.

Presented "The Use of Expert Witness Testimony in Lawyer Disciplinary Proceedings" at the St. Mary's University College of Law Symposium on Legal Malpractice and Professional Responsibility in San Antonio, Texas in February 2005.

Spoke on "The Attorney Discipline Process: Is It Working and Does It Shape Public Opinion Regarding Lawyers?" at the Southeastern Association of Law Schools (SEALS) Annual Meeting at Kiawah Island, South Carolina in August 2004.

As keynote speaker, presented "Does an Anormative Approach to Legal Ethics Really Serve the Public?" at the Pikeville, Kentucky College Conference on Ethics in Criminal Justice in April 2004.

Presented "Ethics and Professionalism in Today's Libraries" at the Virginia Library Association (VLA) Annual Meeting in Hot Springs, Virginia in November 2003.

Presented "Ethics and Professionalism in Law Libraries" at the Annual Meeting of the Virginia Association of Law Libraries (VALL) in Richmond, Virginia in November 2002.

Spoke on "Law Librarians and the Unauthorized Practice of Law" at the Southeastern Association of Law Librarians (SEAALL) Annual Meeting in Fort Lauderdale, Florida in April 2002.

Co-presenter with John Berry, Chair of the ABA Professionalism Commission, on "The Future of the Legal Profession," at Appalachian School of Law in November 2000.

Spoke on "The Ethics of Ethics Consultation" at the 1997 ABA National Conference on Professional Responsibility in Naples, Florida.

At the invitation of the Supreme Court of Kentucky, addressed the 1996 Kentucky Bar Association Annual Convention on "Lawyer Advertising Law and Regulation."

Addressed the 1994 ABA National Conference on Professional Responsibility on "Operating a State Bar Ethics Opinion and Information Service."

Spoke on "Nonlawyer Involvement in the Practice of Law" at the 1989 ABA National Conference on Professional Responsibility in Chicago, Illinois.

OTHER PRESENTATIONS

Presented "Ethics in An Age of Technology" to the Jacksonville Justice Association in December 2017.

Presented "Other People's Money: Properly Handling It In the Plaintiff's Practice," to the Jacksonville Justice Association in February 2017.

Presented "Marching in Formation: Florida Legal Ethics Developments" at the Military Affairs Symposium in Orlando, Florida, in June 2016.

Presented "What's New in Florida Ethics" at the Florida Bar Out of State Division Seminar in New Orleans, Louisiana, in March 2016.

Presented "Electronic Ethics: Staying Compliant in the Digital Age" at the Belmont University College Law Ethics Seminar in Nashville, Tennessee, in December 2015.

Spoke on "Ethics for Health Care Lawyers" at the Tennessee Bar Association Health Law Section Annual Seminar in Cool Springs, Tennessee, in October 2015.

Presented "Ethics and the Municipal Practice," at the Tennessee Municipal Attorneys Association Seminar in Nashville, Tennessee, in June 2015.

Presented "What's New in Florida Legal Ethics?" at Florida Bar General Practice Section Annual Ethics Update in Tampa, Florida in October 2014.

Presented "Florida Ethics Law Update" at Florida Bar Annual Meetings from 2006 through 2014.

Spoke to the Ferguson/White Inn of Court in Tampa, Florida, in March 2014.

Presented "Ethics for Everyone: Avoiding Ethical Pitfalls" at the 2012 Faulkner Law Alumni Seminar in Montgomery, Alabama in May 2012.

Spoke on "Ethics Essentials" at the ALI-ABA Course of Study, "Eminent Domain and Land Valuation Litigation," in Coral Gables, Florida in February 2011.

Presented "Ethics Issues 2011" at the Alabama Banking Law Seminar in Birmingham, Alabama in February 2011.

Presented "Hidden Snares for the Ethical Lawyer" at seminars sponsored by Jones School of Law in 2010 and 2011.

Featured speaker on "The Florida Bar Website Advertising Rules: A Deeper Dive," at a webinar broadcast by the Legal Marketing Association's Southeastern Chapter in May 2010.

Presented "Lawyer Advertising: Where Are We, and Where Are We Going?" at the Legal Marketing Association's Southeastern Chapter in Charlotte, North Carolina in September 2009.

Presented "The Ethics of the Law Business" at the Jones School of Law Annual Alumni Seminar in Montgomery, Alabama in May 2008.

Presented "New Dimensions in Legal Ethics: Getting, Keeping, and Satisfying Clients Ethically" at the Florida Bar Out-of-State Division seminar in New York in February 2008.

Spoke on "Ethics Essentials for Alabama Lawyers" at a continuing legal education seminar in Eufaula, Alabama in March 2007.

Presented "Ethics for Prepaid Legal Services Lawyers" at the Florida Bar Annual Meeting in Orlando, Florida in June 2005.

Presented "What's New in Florida Legal Ethics" at the Florida Bar Annual Meeting in Orlando, Florida in June 2005.

Presented "The Sarbanes-Oxley Act and Related Ethical Developments" at the Florida Bar Annual Meeting in Boca Raton, Florida in June 2004.

Spoke on "Minimize the Risks of Providing Advice to Your Clients" at the Florida Association of Professional Employer Organizations Annual Meeting in Tampa, Florida in April 2004.

Presented "MJP, the ABA, and Recent Developments in Florida Ethics" at the Florida Bar Out of State Division seminar in New York in December 2003.

Presented "MJP and Other Recent Developments in Florida Legal Ethics" at the Florida Bar Out of State Division Fall seminar in Chicago, Illinois in October 2003.

Presented "Hot Ethical Topics for Business Lawyers" at the Florida Bar Business Law Section Annual Retreat in Palm Beach, Florida in August 2003.

Presented "Ethical Issues in Online Legal Research" at the Virginia State Bar Annual Meeting in Virginia Beach, Virginia in June 2003.

Spoke on "Insurance Defense Ethics" at the Florida Bar Annual Meeting in Orlando, Florida in June 2003.

Presented "Ready or Not: Changes on the Ethical Horizon" to the St. Andrews Bay Inns of Court in Panama City, Florida in March 2003.

Spoke on "Ethics for Trial Lawyers" at a Virginia Trial Lawyers Association (VTLA) seminar in Roanoke, Virginia in November 2002.

Discussed "Trust Accounting and Succession Planning for Virginia Lawyers" at an American Liability Protection Society seminar in Grundy, Virginia in September 2002.

Spoke on "Spotting Conflicts of Interest" at the Florida Bar Masters Seminar on Ethics in Boca Raton, Florida in June 2002.

Presented "Hot Topics in Legal Ethics" at the Florida Law Update Seminar, sponsored by Florida Bar General Practice Section, in Boca Raton, Florida in June 2002.

Discussed "Preventing Legal Malpractice Claims and Ethics Complaints in Business Transactions and General Practice" at a risk management conference sponsored by American National Lawyers Insurance Reciprocal in Grundy, Virginia in May 2002.

Spoke on "Ethics for Corporate Counsel" at the Spring Seminar of the Florida Chapter of the American Corporate Counsel Association (ACCA) in Fort Lauderdale, Florida in May 2002.

Presented "Unethical Conduct: Next Stop, Malpractice Liability" to the Kingsport, Tennessee Bar Association in January 2002.

Spoke on "The Ethical Practice of Criminal Defense" to the Virginia College of Criminal Defense Attorneys in Roanoke, Virginia, in October 2001.

Spoke on "The Intersection of Ethics, Professionalism, and Malpractice Liability" at the Florida Bar Masters Seminar on Ethics in Orlando, Florida in June 2001.

Presented "The Top Ten Ethics Issues of the Year" at the Florida Law Update Seminar, sponsored by Florida Bar General Practice Section, in Orlando in June 2001.

Spoke on "Ethical Issues in the Taking and Use of Depositions" at a Jacksonville, Florida continuing legal education seminar in July 2000.

Presented "The Internet and Attorney Ethics" at the annual Amelia Island resort seminar sponsored by the Jacksonville Bar Association in June 2000.

Discussed "Electronic Ethics Issues" at the American Bar Association General Practice Section Spring Meeting in May 2000.

Spoke on "Practical Legal Research and Analysis" at a Jacksonville seminar for paralegals in November 1999.

Presented "Lawyers Online: Do Ethics and Image Mix?" at the Williams Inns of Court in Orlando in October 1999.

Featured luncheon speaker on the topic of "Professionalism in the Information Age" at the annual Amelia Island resort seminar sponsored by the Jacksonville Bar Association in June 1999.

Presented "Recent Ethical Developments" at the "Hot Topics in Commercial Litigation" seminar sponsored by the Florida Bar Business Law Section in April 1999.

Spoke on "Ethics in the Attorney-Client Relationship" and "Substance Abuse in the Practice of Law" at The Florida Bar's "Practicing With Professionalism" program in November 1998.

Presented "Why Don't More People Like Us, and What Should We Do About It? Another View of Professional Ethics and Professionalism," at the Jacksonville Inns of Court in September 1998.

Spoke on "Ethics for Business Litigators" at the 1998 Florida Bar Business Litigation Certification Examination Review Course in Orlando, Florida.

Participated in a panel discussion on "Ethical Considerations in Bankruptcy Practice" at the December 1997 meeting of the Tampa Bay Bankruptcy Bar Association.

Participated in a panel discussion on "The Ethics and Expenses of Undue Influence" at the 1996 Attorney Trust Officer Liaison Conference in Palm Beach, Florida.

Spoke to the 1993 Florida Conference of County Court Judges on "What You Can Do About Attorneys' Professional Conduct."

Addressed the 1992 Annual Meeting of the Association of Professional Responsibility Lawyers on the subject of "New and Controversial Advisory Opinions."

Presented "10 Common Sense Rules to Guide You Through the Ethical Minefields of the 1990s" during a 1991 ethics seminar sponsored by Stetson University College of Law.