

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

Case No. 50-2009CA040800XXXXMBAG

JEFFREY EPSTEIN,

Plaintiff/Counter-Defendant,

v.

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

Defendants/Counter-Plaintiff.

**PLAINTIFF/COUNTER-DEFENDANT JEFFREY EPSTEIN'S
RESPONSE TO DEFENDANT/COUNTER-PLAINTIFF BRADLEY EDWARDS'
MOTION FOR ADVERSE INFERENCE INSTRUCTIONS REGARDING EPSTEIN'S
FIFTH AMENDMENT ASSERTIONS TO FINANCIAL DISCOVERY
AND APRIL 15, 2011 REQUEST TO PRODUCE**

Plaintiff/Counter-Defendant Jeffrey Epstein ("Epstein") responds in opposition to the Motion filed by Defendant/Counter-Plaintiff Bradley Edwards ("Edwards") for Adverse Inference Instructions Regarding Epstein's Fifth Amendment Assertions to Financial Discovery and April 15, 2011 Request to Produce [D.E. 1199], and states:

INTRODUCTION

Edwards seeks two improper adverse inferences: (1) a vague "adverse inference as to all Fifth Amendment assertions concerning punitive damage net worth discovery" and (2) "an adverse inference jury instruction that communications exist between Epstein and the government evidencing that Epstein committed the crimes he was accused of committing."

In this civil malicious prosecution action, Epstein invoked the Fifth Amendment privilege against self-incrimination with respect to net worth discovery and the April 15, 2011 Request to Produce. Edwards wants this Court to instruct a civil jury that they must conclude Epstein committed crimes he was accused of committing. The two are not connected. Not only is such an adverse inference unsupported by the law and reversible error, it is a preview of Edwards' improper attempt to pile on what the jury will already hear this Court ruled to be admissible—Epstein's guilty plea for solicitation of prostitution and procurement for prostitution. Anything additional is clearly Edwards' attempt to inflame the jury with gasoline on the fire, ensuring this case will be tried twice.

Adverse inferences against parties to civil actions based on assertions of the Fifth Amendment privilege are properly admitted only if they are relevant, and not unfairly prejudicial. Edwards offers no legal support for his prejudicial request. The adverse inferences requested are improper where—as here—any probative value is far outweighed by the danger of unfair prejudice. Instead, the jury should be instructed that it may not draw any inference in Edwards' favor based solely on Epstein's assertion of the Fifth Amendment.

BACKGROUND

A. Epstein's Invocation of the Fifth Amendment Privilege as to Financial Discovery

Epstein originally asserted the Fifth Amendment privilege in response to Edwards' interrogatories and production requests seeking net worth discovery. Following extensive discovery requests, responses, motions and hearings, Epstein amended his discovery answers, produced portions of his tax returns and stipulated that his present net worth is more than \$100 million. *See* July 10, 2013 Notice of Serving Unverified Amended Answers to Interrogatories No. 14. (**Exhibit A.**) At a subsequent hearing on September 16, 2013, Epstein's counsel

informed the Court that the Fifth Amendment issue remained as to the pending discovery dispute and Edwards' counsel stated, "I will accept Ms. Coleman's representation on the record that all of the discovery that has been withheld has been withheld solely on the basis of the Fifth Amendment privilege." (T. 21.)¹ Epstein's counsel clarified, "The discovery that was at issue is the net-worth discovery for the punitive damages." (T. 21.) After further discussion, Edwards accepted Epstein's position that the financial discovery was withheld on the basis of the Fifth Amendment privilege. (T. 22.)

Judge Crow's resulting Order on Edwards' Motion to Determine Status of Punitive Damage Discovery and Applicability of Adverse Inference expressly deferred ruling on Edwards' request for an adverse inference jury instruction until trial and stated that: "At the time of trial, upon specific analysis of the specific question and answers, including those propounded in discovery, the Court will determine whether an adverse instruction will, or will not, be given and the specific instruction, if any, that will be given. Counsel for the parties shall be prepared at trial to propose such instructions." (**Exhibit C**) (emphasis added).

B. Epstein's Invocation of the Fifth Amendment Privilege as to the April 15, 2011 Request to Produce

Edwards' April 15, 2011 Request to Produce sought "documents" or "communications" between Epstein (and his agents) and any government official relating to allegations of Epstein's alleged criminal activity or "tortuous [sic]" conduct. The compound and confusing request asked for:

All documents* constituting, reflecting, or relating to communications between [Epstein] or any agent of [Epstein], on the one hand, and . . . any prosecuting, law enforcement, and/or government entity which communication relates directly or indirectly to any allegation of illegal activity or tortuous conduct in which Epstein is alleged to have engaged.

¹ A copy of the relevant pages of the 9/16/13 Hearing Transcript is attached as **Exhibit B**.

(Exhibit D.)

In his response, Epstein appropriately asserted his Fifth Amendment privilege to the request for documents with “any prosecuting, law enforcement, and/or government entities which communication relates directly or indirectly to any allegation of illegal activity or tortious [sic] conduct in which Epstein is alleged to have engaged.” Epstein’s assertion of the Fifth Amendment is clearly justified not only as to the documents, but to the task of identifying responsive documents which may constitute testimonial evidence that would incriminate him.

Importantly, the Request for Documents is overly broad. Even if an adverse inference were permissible, all that could be inferred is that there existed documents which reflect or relate to communications by Epstein and law enforcement or government entities relating to “allegations” of “illegal activity” or “tortious conduct.” The request is not limited to documents that support the allegations. That is, the request is so broad that even if an adverse inference was allowed it would not necessarily have any relation to the claims asserted in this case, or even to the claims by Edwards’ clients of Epstein’s alleged sexual misconduct. Granting such an adverse inference would be prejudicial and completely irrelevant to any claims that Epstein was guilty of crimes alleged to have been committed against Edwards’ clients.

ARGUMENT

- A. *Edwards is not entitled to adverse inferences based on Epstein’s invocation of the Fifth Amendment with respect to financial discovery and the April 15, 2011 request to produce.*

“[A]dverse inferences are appropriately admitted, however, only if they are relevant, reliable, and not unduly prejudicial.” *Woods v. START Treatment & Recovery Ctrs., Inc.*, 864 F.3d 158, 170 (2d Cir. 2017).

Contrary to Edwards' suggestion, when a litigant invokes the Fifth Amendment privilege, "the law . . . does not mandate [adverse] inferences" against him. *See In re Carp*, 340 F. 3d 15, 23 (1st Cir. 2003) (emphasis added). Rather, the United States Supreme Court has recognized that "the Fifth Amendment does not forbid adverse inferences against parties to civil actions when they refuse to testify in response to probative evidence offered against them." *Baxter v. Palmigiano*, 425 U.S. 308, 318 (1976) (emphasis added). *See also Evans v. City of Chicago*, 513 F.3d 735, 741 (7th Cir. 2008) ("We have interpreted *Baxter* to mean that the negative inference against a witness who invokes the Fifth Amendment in a civil case is permissive, not required.").

The Fourth District Court of Appeal has similarly limited adverse inferences against parties to "when they refuse to testify in response to probative evidence offered against them..." *Fraser v. Sec. & Inv. Corp.*, 615 So. 2d 841, 842 (Fla. 4th DCA 1993) (emphasis added). As one court has explained, "[b]ecause the privilege is constitutionally based, the competing interests of the party asserting the privilege and the party against whom the privilege is asserted must be carefully balanced and the detriment to the party asserting it should be no more than is necessary to prevent unfair and unnecessary prejudice to the other side. *Nationwide Ins. Co. v. Richards*, 541 F. 3d 903, 910 (9th Cir. 2008). The *Nationwide* court also recognized that:

under certain circumstances . . . an adverse inference from an assertion of one's privilege not to reveal information is too high a price to pay. The tension between one party's Fifth Amendment rights and the other party's right to a fair proceeding is resolved by analyzing each instance where the adverse inference was drawn, or not drawn, on a case-by-case basis under the microscope of the circumstances of that particular civil litigation. The inference may not be drawn "**unless there is a substantial need for the information** and there is not another less burdensome way of obtaining that information." **The district court must determine 'whether the value of present[ing] the evidence [is] substantially outweighed by the danger of unfair prejudice' to the party asserting the privilege.** Moreover, the inference may

be drawn only when there is independent evidence of the fact about which the party refuses to testify.

Id. at 912 (citations omitted and emphasis added).

Here, the adverse inferences sought are not relevant to this civil action and the clear danger of unfair prejudice substantially outweighs any value of the inference.

1. *Financial Net Worth Adverse Inference Would Constitute Reversible Error*

Epstein provided information for Edwards to enter into evidence in the unlikely event that this case continues to a second phase for punitive damages. In his amended discovery answers, Epstein produced portions of his tax returns and stipulated that his present net worth exceeds \$100 million. (*See Exhibit A*). Anything further is simply unsupported by Florida law and would result in a tipping of the scales of justice toward prejudice against Epstein. This Court should deny Edwards' vague request for an adverse inference concerning punitive damage net worth discovery.

2. *An Adverse Inference that “that Epstein Committed the Crimes He Was Accused of Committing” Would Constitute Reversible Error*

Edwards claims he sought discovery in this action relating to “Epstein’s [alleged] sexual molestation of children” with his request for production of “...communications between [Epstein] or any agent of [Epstein]...and/or government entity which communication relates... to any allegation of illegal activity or tortuous [sic] conduct in which Epstein is alleged to have engaged.” (Mot. at ¶ 5). This provocatively phrased request in and of itself reveals Edwards’ true intent – to repeatedly and consistently inflame and prejudice the jury more than they already will be based on the evidence this Court ruled admissible- Epstein’s guilty plea, admission that he served time, and status as a registered sexual offender.

But, Edwards wants more! Instead of focusing on his heavy burden of proving no probable cause to believe Edwards could have been connected with Edwards' partner-Ponzi Schemer Rothstein, Edwards focuses on proving Epstein committed crimes. Edwards claims he "is entitled to an adverse inference jury instruction that communications exist between Epstein and the government evidencing that Epstein committed the crimes he was accused of committing. (Mot. at ¶ 6). Edwards' argument contains a disconnect because this is not a criminal trial! Epstein has argued time and time again, his criminal case and the allegations stemming from that case have nothing to do with *Edwards, his malicious prosecution counterclaim, or his three clients*. (See, e.g., Epstein's 2/8/18 Motion in Limine at to Sex Offender Registry [D.E. 1193]²).

Based on this Court's pretrial rulings, this jury will already hear about Epstein's Non-Prosecution Agreement (NPA) and guilty plea agreement. It is undisputed – Epstein does not deny – that he pled guilty to one count of an offense that requires him to register as a sexual offender. The NPA required Epstein to plead guilty to a registrable offense, and the plea agreement itself expressly designates Epstein as a sexual offender. Any other "documents" or "communications" for which Edwards seeks an adverse inference that relate to Epstein's criminal case or crimes he may have been accused of are irrelevant to this action, extremely prejudicial, cumulative at this point, and would only serve as an incendiary to the jury.

As the Second Circuit has explained: "the danger of unfair prejudice is [already] high when a jury is told that a witness declined to answer a question by invoking the Fifth Amendment; the implication is, at best, that the witness refused to answer because she had something to hide." *Woods v. START Treatment & Recovery Ctrs., Inc.*, 864 F.3d 158, 171 (2d

² The criminal offense to which Epstein pled guilty that triggered the sexual offender registration requirement related to a specific individual who was never Edwards' client and was a procurement offense, which is not the conduct alleged by Edwards' clients to have been committed against them.

Cir. 2017). It is difficult to imagine greater prejudice than from the Court instructing the jury that Edwards is entitled to an adverse inference “that communications exist between Epstein and the government evidencing that Epstein committed the crimes he was accused of committing.” (Mot. at ¶ 6).

3. *Edwards’ Only Cited Case Supports Denial of Edwards’ Request*

The only case cited by Edwards, *Atlas v. Atlas*, 708 So. 2d 296 Fla. 4th DCA 1998), should guide this Court to reject Edwards’ request for an adverse inference. First, *Atlas* reiterates that “a court *may* [i.e., not required to] draw an adverse inference against a party in a civil action who invokes the Fifth Amendment privilege against self-incrimination.” *Id.* at 299 (emphasis added). Factually, *Atlas* involved a contempt proceeding following the ex-husband’s failure to pay child support, failed to present evidence of his inability to pay the purge amount, and then invoked the Fifth Amendment concerning his financial status and his financial affidavit. *Id.* at 299. The Fourth District Court of Appeal concluded that “[t]he trial court could have properly drawn an adverse inference from this invocation that would further support a finding that [the ex-husband], who has continuously fought payment of his child support since 1990, had the ability to pay the purge amount ordered.” *Id.*

Here, unlike in *Atlas* where no financial disclosure was provided for a purge hearing on child support, Epstein has provided information of his financial status. Anything further would cause unfair prejudice and tip the scales of justice in a civil matter against Epstein.

B. *If any instruction is given, the jury should be instructed that it may not base its verdict solely upon any adverse inference drawn from Epstein’s invocation of the Fifth Amendment.*

If the Court decides to provide any instruction as it relates to Epstein’s invocation of the Fifth Amendment privilege against self-incrimination, the Court should instruct the jury that an

adverse inference is permitted but not required and that Edwards cannot solely rely on Epstein's assertion of the Fifth Amendment as proof of elements that Edwards must independently prove to prevail on his malicious prosecution claim, such as lack of probable cause.

Coquina Investments v. Rothstein, No. 10-60786-CIV, 2012 WL 4479057 (S.D. Fla. Sept. 28, 2012) is particularly instructive. In *Coquina*, the plaintiffs had invested with Edwards' partner, Scott Rothstein, and sued TD Bank for allegedly aiding and abetting Rothstein's fraud. At trial, the plaintiff called TD Bank's former regional vice president as a witness, who asserted his Fifth Amendment privilege to questions regarding his role in the Rothstein fraud. The court instructed the jury that, "Mr. Spinosa's assertion of his Fifth Amendment privilege . . . is not a proper basis for finding TD Bank liable in this case," and that the assertion of the privilege (and any adverse inferences from it) could only be considered by the jury "in conjunction with other evidence to be presented." *Id.* at *9. On post-verdict motions, the court confirmed that, "[a] jury can only draw an adverse inference against a party as to a particular fact when independent evidence exists of the fact to which the party refuses to answer. In other words, a judgment cannot rest solely on the adverse inference." *Id.* at *10. *See also LaSalle Bank Lake View v. Seguban*, 54 F. 3d 387 (7th Cir. 1995) (citing *Baxter* and holding that an assertion of the Fifth Amendment privilege must be "weighed in light of other evidence rather than leaving directly and without more to the conclusion of guilt or liability."); *Centennial Life Ins. Co. v. Nappi*, 56 F. Supp. 222, 228 (N.D. N.Y. 1997) ("An adverse inference against the party invoking the Fifth Amendment by itself is insufficient to establish the absence of a genuine issue of material fact").

At his deposition on November 10, 2017, Edwards admitted he had no evidence of Epstein's state of mind or the facts and circumstances known to Epstein regarding probable cause to file his Complaint other than Epstein himself. *See* Edwards' Nov. 10, 2017, Tr. at

276:24 – 278:15.³ Given this lack of evidence, Edwards will likely attempt to rely on Epstein’s invocation of the Fifth Amendment privilege against self-incrimination in order to disprove Epstein’s probable cause for having a reasonable belief that Edwards’ overly zealous litigation tactics as an RRA partner indicated that Edwards was involved with Rothstein’s Ponzi scheme. *See* Edwards’ Nov. 10, 2017, Tr. at 227:13-229:13 (Edwards testifying that he argued Epstein’s invocation of the Fifth Amendment as an admission in a federal action and stating “that’s going to happen in this case, too.”).

Clearly, Epstein’s exercise of his constitutional right to remain silent has nothing to do with his perception and reasonable belief that Edwards’ actions and “partner” status with Rothstein connected Edwards to Rothstein’s Ponzi scheme and luring of investors.

Coquina Investments and other similar cases have made clear that invocation of the Fifth Amendment cannot be the sole basis for a verdict or judgment. Any suggestion by this Court that Edwards is excused from proving his case by implication of Epstein’s Fifth Amendment right is error. Rather, the proper rebalancing would be an instruction by this Court that Edwards’ case is not proven on the invocation of Fifth Amendment rights and Edwards must have “independent evidence” to prove a lack of probable cause.

CONCLUSION

Epstein respectfully requests that this Court deny Edwards’ Motion for Adverse Inference Instructions Regarding Epstein’s Fifth Amendment Assertions to Financial Discovery and April 15, 2011 Request to Produce.

³ Excerpts of Edwards’ November 10, 2017, deposition transcript are attached as **Exhibit E**.

CERTIFICATE OF SERVICE

I certify that the foregoing document has been furnished to the attorneys listed on the Service List below on February 26, 2018, through the Court's e-filing portal pursuant to Florida Rule of Judicial Administration 2.516(b)(1).

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NOT A CERTIFIED COPY

EXHIBIT A

NOT A CERTIFIED COPY

JEFFREY EPSTEIN,

Plaintiff,

vs.

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

Defendants.

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

CASE NO.502009CA040800XXXXMBAG

**JEFFREY EPSTEIN'S NOTICE OF SERVING UNVERIFIED AMENDED
ANSWERS TO DEFENDANT BRADLEY EDWARDS'S INTERROGATORIES**

Plaintiff Jeffrey Epstein, by and through his undersigned counsel and pursuant to Rule 1.340 of the *Florida Rules of Civil Procedure*, hereby certifies that the original amended answers to Defendant's Interrogatories was served upon Defendant via electronic service this July 10, 2013.

/s/ Tonja Haddad Coleman

Tonja Haddad Coleman, Esq.
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JEFFREY EPSTEIN,

Plaintiff,

vs.

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

Defendants.

IN THE CIRCUIT COURT OF THE
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JEFFREY EPSTEIN,

Plaintiff,

vs.

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

Defendants.

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

CASE NO.: 502009CA040800XXXXMBAG

JUDGE: CROW

**PLAINTIFF/COUNTER-DEFENDANT EPSTEIN'S AMENDED RESPONSES TO
NET WORTH INTERROGATORIES TO JEFFREY EPSTEIN**

Plaintiff/Counter-Defendant Jeffrey Epstein ("Epstein"), by and through his undersigned counsel and pursuant to Rule 1.350 of the *Florida Rules of Civil Procedure* hereby files his amended responses to Defendant/Counter-Plaintiff Bradley Edward's Net Worth Interrogatories to Jeffrey Epstein:

1. What is your full name?

ANSWER: Jeffrey Edward Epstein

2. How are you currently employed?

ANSWER: Self-employed and Philanthropist.

3. State the amount of your current annual income from all sources for each of the past 3 years and describe all additional benefits received by you or payable to you for each of the past 3 years including bonuses, allowances, pension and profit sharing participations, stock options, deferred compensation, insurance benefits and other prerequisites of your employment including dollar amount or dollar value of each.

Answer: Objection. This Interrogatory requires the provision of detailed financial information which communicates statements of fact. *Fisher v. United States*, 425 U.S. 391, 410 (1976). I have a substantial and reasonable basis for concern that these statements of fact that are testimonial in nature could reasonably furnish a "link in the chain of evidence" that could be used to prosecute me in criminal proceedings. See *Hoffman v. United States*, 341 U.S. 479, 486 (1951). I cannot provide answers/responses to questions relating to my financial history and condition without waiving my Fifth, Sixth and Fourteenth Amendment rights as guaranteed by the United States Constitution.

4. If you own or have any beneficial interest in any stocks, bonds, mutual funds, or other securities of any class in any government, governmental organization, company, firm or corporation, whether foreign or domestic, please state:

- a. The name and address of the entity in which you own or have any beneficial property or security interest of any sort;
- b. The date and cost of acquisition;
- c. The current fair market value of each such interest;
- d. The manner in which such value was calculated.

Answer: Objection. This Interrogatory requires the provision of detailed financial information which communicates statements of fact. *Fisher v. United States*, 425 U.S. 391, 410 (1976). I have a substantial and reasonable basis for concern that these statements of fact that are testimonial in nature could reasonably furnish a "link in the chain of evidence" that could be used to prosecute me in criminal proceedings. See *Hoffman v. United States*, 341 U.S. 479, 486 (1951). I cannot provide answers/responses to questions relating to my financial history and condition without waiving my Fifth, Sixth and Fourteenth Amendment rights as guaranteed by the United States Constitution.

5. As to each income tax return filed by you or on your behalf with any taxing authority for the years 2009 through 2012, identify as specifically as identified in your tax return the source of all reported income and the separate amounts derived from each source.

Answer: Objection. This Interrogatory requires the provision of detailed financial information which communicates statements of fact. *Fisher v. United States*, 425 U.S. 391, 410 (1976). I have a substantial and reasonable basis for concern that these statements of fact that are testimonial in nature could reasonably furnish a "link in the chain of evidence" that could be used to prosecute me in criminal proceedings. See *Hoffman v. United States*, 341 U.S. 479, 486 (1951). I cannot provide answers/responses to questions relating to my financial history and condition without waiving my Fifth, Sixth and Fourteenth Amendment rights as guaranteed by the United States Constitution.

6. For each parcel of real property in which you hold any interest: state:

- a. The address;
- b. The legal description of the property;
- c. The assessed value of the property for tax purposes;
- d. The date and price of acquisition;

- e. Whether, when, by whom, why and at what amount the property has been appraised since the time of purchase;
- f. Whether, when and at what price the property has been offered for sale since the time of purchase;
- g. The name and address of each real estate agent with whom the property has been listed for sale since the time of purchase;
- h. The cost of any improvements made to the property since purchase;
- i. The nature of your interest in the property;
- j. The current fair market value of the property and a description of the manner in which that value was calculated.

Answer: Objection. This Interrogatory requires the provision of detailed financial information which communicates statements of fact. *Fisher v. United States*, 425 U.S. 391, 410 (1976). I have a substantial and reasonable basis for concern that these statements of fact that are testimonial in nature could reasonably furnish a "link in the chain of evidence" that could be used to prosecute me in criminal proceedings. See *Hoffman v. United States*, 341 U.S. 479, 486 (1951). I cannot provide answers/responses to questions relating to my financial history and condition without waiving my Fifth, Sixth and Fourteenth Amendment rights as guaranteed by the United States Constitution.

7. List each item and state the estimated value of all personal tangible, and intangible property in which you have an interest which personal property was acquired at a cost in excess of \$10,000 or which personal property has an estimated present value in excess of \$10,000, and as to each state:

- a. The date of acquisition;
- b. The cost of acquisition;
- c. The current estimated fair market value;
- d. The manner in which the fair market value was estimated.

Answer: Objection. This Interrogatory requires the provision of detailed financial information which communicates statements of fact. *Fisher v. United States*, 425 U.S. 391, 410 (1976). I have a substantial and reasonable basis for concern that these statements of fact that are testimonial in nature could reasonably furnish a "link in the chain of evidence" that could be used to prosecute me in criminal proceedings. See *Hoffman v. United States*, 341 U.S. 479, 486 (1951). I cannot provide answers/responses to questions relating to my financial history and condition without waiving my Fifth,

Sixth and Fourteenth Amendment rights as guaranteed by the United States Constitution.

8. If any of the real or personal property owned by you, either individually, jointly or otherwise, is encumbered by a real estate mortgage, chattel mortgage, or any other type of lien, then for each property, state a description of the nature and amount of the encumbrance, the date the encumbrance arose, whether the encumbrance is evidenced by any written document and, if so, a description of that document.

Answer: Objection. This Interrogatory requires the provision of detailed financial information which communicates statements of fact. *Fisher v. United States*, 425 U.S. 391, 410 (1976). I have a substantial and reasonable basis for concern that these statements of fact that are testimonial in nature could reasonably furnish a "link in the chain of evidence" that could be used to prosecute me in criminal proceedings. See *Hoffman v. United States*, 341 U.S. 479, 486 (1951). I cannot provide answers/responses to questions relating to my financial history and condition without waiving my Fifth, Sixth and Fourteenth Amendment rights as guaranteed by the United States Constitution.

9. If you have an ownership interest in any businesses, for each business state:

- a. The name and address of the business;
- b. The present book value and the present market value of your interest in the business, and its percentage of the total value of the business;
- c. A description of the manner in which the fair market value was calculated.

Answer: Objection. This Interrogatory requires the provision of detailed financial information which communicates statements of fact. *Fisher v. United States*, 425 U.S. 391, 410 (1976). I have a substantial and reasonable basis for concern that these statements of fact that are testimonial in nature could reasonably furnish a "link in the chain of evidence" that could be used to prosecute me in criminal proceedings. See *Hoffman v. United States*, 341 U.S. 479, 486 (1951). I cannot provide answers/responses to questions relating to my financial history and condition without waiving my Fifth, Sixth and Fourteenth Amendment rights as guaranteed by the United States Constitution.

10. Identify all banks, credit union and savings and loan accounts, in which you have an interest or right of withdrawal and for each account state:

- a. Where the account is located;
- b. The highest and lowest balance in the account during the 365 day period immediately preceding your receipt of these interrogatories.

Answer: Objection. This Interrogatory requires the provision of detailed financial information which communicates statements of fact. *Fisher v. United States*, 425 U.S.

391, 410 (1976). I have a substantial and reasonable basis for concern that these statements of fact that are testimonial in nature could reasonably furnish a "link in the chain of evidence" that could be used to prosecute me in criminal proceedings. *See Hoffman v. United States*, 341 U.S. 479, 486 (1951). I cannot provide answers/responses to questions relating to my financial history and condition without waiving my Fifth, Sixth and Fourteenth Amendment rights as guaranteed by the United States Constitution.

11. Identify all other assets of a value in excess of \$10,000 which assets were not previously identified and as to each state;

- a. The date of acquisition;
- b. The cost of acquisition;
- c. The current estimated fair market value;
- d. The means utilized to estimate the current fair market value.

Answer: Objection. This Interrogatory requires the provision of detailed financial information which communicates statements of fact. *Fisher v. United States*, 425 U.S. 391, 410 (1976). I have a substantial and reasonable basis for concern that these statements of fact that are testimonial in nature could reasonably furnish a "link in the chain of evidence" that could be used to prosecute me in criminal proceedings. *See Hoffman v. United States*, 341 U.S. 479, 486 (1951). I cannot provide answers/responses to questions relating to my financial history and condition without waiving my Fifth, Sixth and Fourteenth Amendment rights as guaranteed by the United States Constitution.

12. Identify all other liabilities of an amount in excess of \$10,000 not previously identified and as to each state;

- a. The date the liability arise;
- b. The amount of the liability at inception;
- c. The terms of repayment or satisfaction;
- d. The current outstanding balance.

Answer: Objection: This Interrogatory requires the provision of detailed financial information which communicates statements of fact. *Fisher v. United States*, 425 U.S. 391, 410 (1976). I have a substantial and reasonable basis for concern that these statements of fact that are testimonial in nature could reasonably furnish a "link in the chain of evidence" that could be used to prosecute me in criminal proceedings. *See Hoffman v. United States*, 341 U.S. 479, 486 (1951). I cannot provide answers/responses to questions relating to my financial history and condition without waiving my Fifth,

Sixth and Fourteenth Amendment rights as guaranteed by the United States Constitution.

13. As to any calculation or estimate of your net worth at any time in the five years immediately preceding your receipt of these interrogatories, state:

- a. The date of the calculation or estimate;
- b. The name and address of the person or entity responsible for performing the work;
- c. The reason for performing the calculation or estimate;
- d. The amount of net worth calculated or estimated.

Answer: Objection. This Interrogatory requires the provision of detailed financial information which communicates statements of fact. *Fisher v. United States*, 425 U.S. 391, 410 (1976). I have a substantial and reasonable basis for concern that these statements of fact that are testimonial in nature could reasonably furnish a "link in the chain of evidence" that could be used to prosecute me in criminal proceedings. See *Hoffman v. United States*, 341 U.S. 479, 486 (1951). I cannot provide answers/responses to questions relating to my financial history and condition without waiving my Fifth, Sixth and Fourteenth Amendment rights as guaranteed by the United States Constitution.

14. What is your present net worth?

Answer: I have already indicated my willingness to stipulate to a net worth in excess of one hundred million dollars.

15. As to all transfers of anything of a value in excess of \$10,000 made by you or on your behalf within the past 5 years, state:

- a. A description of the transferred property;
- b. The reason for the transfer;
- c. The value of the item(s) transferred at the time of transfer;
- d. The date and cost of your acquisition of the item(s);
- e. Whether you received anything of value in exchange for the transferred item(s) and, if so, a description of what you received and the dollar value of what you received;
- f. The name and address of the recipient of each transferred item.

Answer: Objection. This Interrogatory requires the provision of detailed financial information which communicates statements of fact. *Fisher v. United States*, 425 U.S. 391, 410 (1976). I have a substantial and reasonable basis for concern that these statements of fact that are testimonial in nature could reasonably furnish a “link in the chain of evidence” that could be used to prosecute me in criminal proceedings. See *Hoffman v. United States*, 341 U.S. 479, 486 (1951). I cannot provide answers/responses to questions relating to my financial history and condition without waiving my Fifth, Sixth and Fourteenth Amendment rights as guaranteed by the United States Constitution.

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EXHIBIT B

NOT A CERTIFIED COPY

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,

11 Defendants.

HEARING HELD BEFORE
THE HONORABLE DAVID E. CROW

Monday, September 16, 2013
3:30 p.m. - 4:05 p.m.

✓ 205 North Dixie Highway
West Palm Beach, FL 33401

24 Reported By:
Pamela Pittman Gunn, FPR
25 Notary Public, State of Florida

1 APPEARANCES:

2 On behalf of the Plaintiff:
Page 1

21 sometimes the court can look at in-camera to
22 determine if it's --

23 MS. COLEMAN: If you would like us to
24 do --

25 THE COURT: No, I never asked for

1 in-camera inspection if I don't need to do one
2 I'm just asking what it is I need to do that I
3 haven't done in regards to the privilege log in
4 regard to Mr. Epstein. We're just dealing with
5 this.

6 MR. SCAROLA: I will accept Ms. Coleman's
7 representation on the record that all of the
8 discovery that has been withheld has been
9 withheld solely on the basis of the Fifth
10 Amendment privilege.

11 THE COURT: There's been a privilege log
12 filed or not?

13 MS. COLEMAN: No, Judge. The answer it's
14 all net-worth discovery. The discovery that
15 was at issue is the net-worth discovery for the
16 punitive damages.

17 THE COURT: This is probably unfair to you
18 guys. I'm asking questions because it concerns
19 me if there's something out there I'm supposed
20 to be ruling on and I might have to do that.
21 Is there something pending on me that I'm
22 supposed to rule on?

23 MR. SCAROLA: Not if the only privilege
24 that's being asserted is a Fifth Amendment

25 hrg091613epstein.txt
privilege. Your Honor may recall that what you

22

1 did talk about at the time of that last hearing
2 was that some of the financial information that
3 was requested was corporate financial
4 information. And you correctly observed a
5 corporation has no Fifth Amendment privilege.
6 So I don't know -- Your Honor asks the
7 rhetorical question. I don't know how you can
8 be asserting a Fifth Amendment privilege with
9 regard to the corporate records.

10 THE COURT: It has to be testimonial even
11 if it's an individual. I remember that.

12 MR. SCAROLA: Correct. And those were the
13 concerns that Your Honor expressed. And it was
14 my understanding that that shifted the burden
15 back to the counter defendant to provide
16 something else to Your Honor with regard to
17 those matters. But I will repeat, if the
18 position of the counter defendant is that
19 everything that has been withheld in discovery
20 has been withheld on the basis of the Fifth
21 Amendment privilege, I'll accept that
22 representation.

23 THE COURT: I'm asking you. I don't want
24 to get --

25 MS. COLEMAN: That is not what I said,

23

1 Judge.

2 THE COURT: Hang on. I'm going to set a
Page 19

EXHIBIT C

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

CASE NO.: 502009CA040800XXXXMBAG

JEFFREY EPSTEIN,

Plaintiff(s),

vs.

SCOTT ROTHSTEIN, etc., et al.,

Defendant(s).

ORDER ON COUNTER-PLAINTIFF BRADLEY EDWARDS'
MOTION TO DETERMINE STATUS OF PUNITIVE DAMAGE DISCOVERY
AND APPLICABILITY OF ADVERSE INFERENCE

THIS CAUSE came before the Court upon the Counter-Plaintiff, BRADLEY EDWARDS' Motion to Determine Status of Punitive Damage Discovery. The Court heard argument of counsel, has reviewed the submittals and is otherwise fully advised in the premises. At hearing, counsel for EDWARDS advised the Court that certain "net worth" discovery in regard to the punitive damage count against EPSTEIN had been objected to on the basis of the constitutional privilege against self-incrimination. All other objections to such discovery had been withdrawn. As such, EDWARDS now seeks a ruling from the Court in regard to an adverse inference (presumption) jury instruction and evidence preclusion at the time of trial. Based upon the foregoing, it is

CONSIDERED, ORDERED AND ADJUDGED as follows:

To the extent that the issue of amount of punitive damages is submitted to the jury at the bifurcated trial of this matter, the Court rules as follows:

1. The Counter-Plaintiff EDWARDS' request for jury instruction adverse inference instruction is deferred until the time of trial. At the time of trial, upon specific analysis of the specific question and answers, including those propounded in discovery, the Court will determine whether an adverse instruction will, or will not, be given and the

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specific instruction, if any, that will be given. Counsel for the parties shall be prepared at trial to propose such jury instructions.

2. The Motion to Preclude Evidence is also deferred until the time of trial. At the time of trial, this Court will determine whether certain testimony and/or documents will be precluded based upon non-compliance with this Court's Pretrial Order and/or a *Binger* analysis conducted by the Court at the time of trial.

3. Nothing in this Order shall be construed in and of itself as precluding the use of any answers submitted by EPSTEIN during discovery at trial if they are otherwise admissible.

DONE AND ORDERED this 12 day of November, 2013 at West Palm Beach, Palm Beach County, Florida.

DAVID F. CROW
CIRCUIT COURT JUDGE

Copy furnished:
See attached list.

Copies furnished by e-mail:

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Edwards adv. Epstein
Case No.: 502009CA040800XXXXMBAG

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EXHIBIT D

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

CASE NO.: 502009CA040800XXXXMBAG

JEFFREY EPSTEIN;

Plaintiff(s),

vs.

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

Defendant(s):

REQUEST TO PRODUCE TO JEFFREY EPSTEIN

Defendant/Counter-Plaintiff, Bradley J. Edwards by and through his undersigned counsel, requests, pursuant to Rule 1.350 of the Florida Rules of Civil Procedure, that Plaintiff/Counter Defendant, Jeffrey Epstein, produce and permit Bradley J. Edwards to inspect and copy each of the following documents*:

1. All documents* constituting, reflecting, or relating to communications between Plaintiff or any agent of Plaintiff, on the one hand, and William Scherer, or any person associated with William Scherer in the practice of law, any prosecuting, law enforcement, and/or government entity which communication relates directly or indirectly to any allegation of illegal activity or tortious conduct in which Epstein is alleged to have engaged.

*"Documents" shall include, but not be limited to all non-identical copies of writings, drawings, graphs, charts, photographs, phono-records, recordings, and/or any other data compilations from which information can be obtained, translated, if necessary, by the party to

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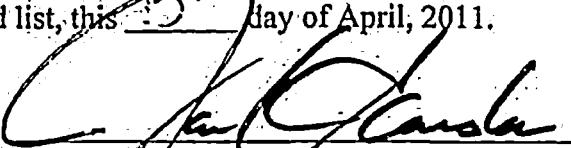
SHARON R. BUCK, CLERK
PALM BEACH COUNTY, FL
CIRCUIT CLERK 3

Edwards adv. Epstein
Case No.: 502009CA040800XXXXMBAG.
Request to Produce to Jeffrey Epstein

whom the request is directed through detection devices into reasonably usable form. "Documents" also include all electronic data as well as application metadata and system metadata. All inventories and rosters of your information technology (IT) systems—e.g., hardware, software and data, including but not limited to network drawings, lists of computing devices (servers, PCs, laptops, PDAs, cell phones, with data storage and/or transmission features); programs; data maps and security tools and protocols.

It is requested that the aforesaid production be made within thirty days of service of this request at the offices of Searcy Denney Scarola Barnhart & Shipley, P.A., 2139 Palm Beach Lakes Boulevard, West Palm Beach, Florida. Inspection will be made by visual observation, examination and/or copying.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Fax and U.S. Mail to all Counsel on the attached list, this 15th day of April, 2011.


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Florida Bar No.: 169440
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Phone: (561) 686-6300
Fax: (561) 383-9451
Attorneys for Bradley J. Edwards

Edwards adv. Epstein
Case No.: 502009CA040800XXXXMBAG
Request to Produce to Jeffrey Epstein

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EXHIBIT E

NOT A CERTIFIED COPY

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

Case No. 502009CA040800XXXXMB

JEFFREY EPSTEIN,

Plaintiff,

vs.

SCOTT ROTHSTEIN, individually;
BRADLEY EDWARDS, individually,

Defendants/Counter-Plaintiffs.

_____/ VOLUME I

VIDEOTAPED DEPOSITION

OF

BRADLEY EDWARDS

Taken on Behalf of Plaintiff

Friday, November 10th, 2017
10:02 a.m. - 6:16 p.m.
2139 Palm Beach Lakes Boulevard
West Palm Beach, Florida 33409

Examination of the witness taken before

Sonja D. Hall
Palm Beach Reporting Service, Inc.
1665 Palm Beach Lakes Boulevard, Suite 1001
West Palm Beach, FL 33401
(561) 471-2995

1 the many topics that, amongst plaintiffs'
2 counsel, we discussed as the way in which
3 Epstein intended to ultimately defeat these
4 cases, which would ultimately prove his
5 serial sexual molestation of minors.

6 BY MR. LINK:

7 Q So is your concern something that's
8 evidence?

9 A And we had a source telling us our concern
10 was true.

11 Q I understand.

12 A Okay, so --

13 Q I have heard about the source. I am asking
14 you about evidence. You told me you had concerns.
15 Okay, I don't know that a federal judge cares about
16 your personal concerns. I doubt that a federal judge
17 cares that you have a source who won't get on the
18 stand.

19 So whenever I have filed a motion for
20 injunction, I intend to put evidence on in front of
21 the court. And I'm asking you, sir, what evidence
22 did you have in this federal proceeding to prove
23 your statement that Mr. Epstein was fraudulently
24 transferring his assets overseas?

25 MR. SCAROLA: Excuse me. I'm going to

1 object to Counsel's speech about Counsel's
2 experience. Move that it be stricken.

3 And the question as to what evidence
4 did Mr. Edwards have --

5 MR. LINK: Yes.

6 MR. SCAROLA: -- is a question that has
7 been asked and answered repeatedly.

8 BY MR. LINK:

9 Q So would you agree you had no admissible
10 evidence at the time that you filed this pleading?

11 A Hold on one second. So --

12 Q Yes, sir.

13 A -- this is evidence.

14 Q What is it?

15 A In request for admission I asked
16 Mr. Epstein --

17 Q Yes.

18 A -- admit you are moving financial assets
19 overseas outside of the direct territorial reach of the
20 US and Florida courts.

21 Question 22, you were making asset
22 transfers with the intent to defeat any judgment
23 that might be entered against you in this case or
24 similar cases.

25 Twenty-three, do you currently have the

1 ability to post a \$15 million bond to satisfy a
2 judgment in this case without financial or other
3 difficulty?

4 Q Uh-huh.

5 A If he told the truth, he would have said yes.
6 And that is what the adverse inference requirement
7 allows for us to draw when he says in response to those
8 direct requests for admissions that he's invoking his
9 Fifth Amendment right against self-incrimination, which
10 is tantamount to an admission. So that is evidence.

11 Q Okay. So you think that the adverse
12 inference --

13 A That's going to happen in this case, too.

14 Q Hang on. Let me just make sure I
15 understand.

16 You thought when you filed this that
17 having an adverse inference to a question --
18 whatever question you asked -- because he raised the
19 Fifth, makes it an admission? That's your
20 understanding of an adverse inference in federal
21 court?

22 A I had an admission by Mr. Epstein in response
23 to his question.

24 Q That was it? You told me he pled the Fifth
25 and didn't answer. All I'm asking is, was it your

1 belief that at the time in federal court that an
2 adverse inference based on raising a Fifth Amendment
3 privilege is an admission of your question?

4 A If his answer to that --

5 MR. SCAROLA: I'm sorry. The question
6 about what Mr. Edwards' belief was is
7 clearly a question that invades the
8 work-product privilege.

9 MR. LINK: Okay. Fair enough.

10 BY MR. LINK:

11 Q But the only evidence you had that you can
12 point to was your asking Mr. Epstein a question that
13 he raised his constitutional privilege to and that
14 you considered that an admission for purposes of
15 federal court?

16 MR. SCAROLA: Pardon me. That's
17 compound. You can ask him what the evidence
18 was. You cannot ask him what he considered.
19 What he considered is an operation of his
20 mind, and that is protected work product.

21 BY MR. LINK:

22 Q Do you remember on September 29, 2009,
23 writing a memo saying it would be really nice if we
24 can find evidence of a transfer?

25 A Show it to me. I will see it.

1 A Sarah Kellen was on the airplane with Jeffrey
2 Epstein and an underaged girl. Jeffrey Epstein makes
3 the allegation in the complaint that the proof that
4 Brad Edwards was pumping a Ponzi scheme is that he
5 sought flight logs, despite knowing that there were no
6 underaged girls on the airplane. Jeffrey Epstein knew
7 that to be false, because there were indeed underaged
8 girls on the airplane.

9 To the extent that Jeffrey Epstein himself
10 won't say that I knowingly filed this false
11 allegation, Sarah Kellen could say, I know that
12 Jeffrey Epstein knew that that was a false
13 allegation, because I too was on the airplane and so
14 was this underaged girl, and he knew that.

15 So at the time that he filed this
16 complaint, he knew that it was false, the
17 allegations that he was making, which allegedly
18 formed the basis of his assertion that I was
19 involved in a Ponzi scheme.

20 Q Okay.

21 You lost me, but I'm not going --

22 A Read it back. I think it makes sense.

23 Q I'm not going to try to figure that out.

24 Do you have anyone that can testify about
25 what was in Mr. Epstein's mind in December 2009 at

1 the time that the lawsuit was filed about why he
2 filed it?

3 A Mr. Epstein testified to that.

4 Q Other than Mr. Epstein, do you have any
5 witnesses that are going to testify about the reasons
6 why Mr. Epstein made the decision to file the
7 lawsuit?

8 A No. It's very obvious why he filed the
9 lawsuit.

10 Q You have no other witnesses other than
11 Mr. Epstein, correct?

12 A We have attempted to take his attorneys'
13 depositions and they have all rejected that
14 opportunity. So he has no witnesses that can testify
15 as to what was in his mind at that time.

16 Q You are the plaintiff in the counterclaim,
17 right?

18 A We will see how this unfolds, right?

19 Q Let me just wrap this up, because you have
20 given me a lot of information to which I think are
21 simple questions. Do you have a witness that will
22 testify, other than Mr. Epstein, about what was in
23 his mind in December 2009 about why he brought the
24 lawsuit?

25 MR. SCAROLA: Direct evidence or

1 circumstantial evidence or both?

2 THE WITNESS: Let me think about that
3 question. About why he brought the lawsuit.
4 Specifically that.

5 MR. LINK: Can you read back the
6 question for him, please?

7 I won't take that as coaching at all.
8 In any event, well done. But I don't think
9 you heard my question.

10 Can you read it back?

11 (Thereupon, the requested portion of the
12 record was read back by the reporter as
13 above duly recorded.)

14 THE WITNESS: A witness other than
15 Mr. Epstein, no.

16 BY MR. LINK:

17 Q Thank you.

18 Why was Bill Berger added to the witness
19 list last night?

20 A You will have to ask somebody other than
21 myself.

22 Q Do you know what Mr. Berger -- why he's
23 listed as an expert in this case?

24 A Again, that's a question for the lawyers.

25 Q Do you know when Mr. Berger agreed to