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

JEFFREY EPSTEIN,

Plaintiff/Counter-Defendant,

Case No. 50 2009 CA 040800XXXXMBAG

v.

BRADLEY J. EDWARDS, et al.,

JUDGE: HAFELE

Defendants/Counter-Plaintiff.
_____/

JEFFREY EPSTEIN'S RESPONSE TO BRADLEY EDWARDS'S MOTION IN LIMINE TO STRIKE THE JUNE 30, 2017 AFFIDAVIT OF JEFFREY EPSTEIN AND TO EXCLUDE EVIDENCE AS TO WHICH DISCOVERY WAS WITHHELD UNDER CLAIMS OF PRIVILEGE

Plaintiff/Counter-Defendant Jeffrey Epstein ("Epstein"), by and through his undersigned counsel, hereby files his Response to Defendant/Counter-Plaintiff Bradley Edwards's ("Edwards") Motion in Limine to Strike the June 30, 2017 affidavit of Jeffrey Epstein,[1] which was filed in support of the undisputed facts as recited in his Motion for Summary Judgment, and to "exclude evidence as to which discovery was withheld under claims of privilege." As demonstrated more fully below, Edwards's Motion is deficient on its face, and in direct contravention to the facts. As such, Edwards's Motion should be denied.

INTRODUCTION

Epstein filed his Motion for Summary Judgment on June 30, 2017, and in support thereof executed an affidavit, which was nearly identical to the one he executed in support of his previously filed Motion for Summary Judgment in 2012. In this affidavit, Epstein delineates the undisputed facts upon which he relied in filing suit against Edwards. A true

[1] While the Court denied as moot the striking of the affidavit as to Epstein's Motion for Summary Judgment for purposes of the Summary Judgment hearing, the issues raised in the Motion are still addressed herein.

and correct copy of same is attached hereto as "Exhibit A." Edwards now seeks to strike this affidavit, and asserts as grounds therefor Epstein's assertion of his Fifth Amendment Privilege against self-incrimination in response to discovery posed to Epstein. However, as demonstrated below, Edwards's Motion is meritless should be denied, as the facts alleged on Epstein's Affidavit are entirely consistent with his testimony, under oath, at his deposition, as well as with evidence provided in this case, contrary to Edwards's assertions.

Additionally, Edwards's Motion seeks an Order *in limine* precluding unspecified and unidentified evidence. As such, his Motion should also be denied for failing to identify that evidence he seeks to preclude. Accordingly, Edwards's Motion should be denied.

MEMORANDUM OF LAW

I. EPSTEIN'S STATEMENTS IN HIS JUNE 30, 2017 AFFIDAVIT ARE CONSISTENT WITH EPSTEIN'S PREVIOUS TESTIMONY REGARDING THE ALLEGATIONS RELEVANT TO THIS CASE

Epstein's deposition was taken by Edwards on March 17, 2010. In that deposition, Epstein did assert the following privileges to certain questions posed by Edwards: attorney-client and Fifth Amendment. However, Epstein answered all of the questions *actually germane to this lawsuit.* Even a cursory review of Epstein's deposition unequivocally shows that he only asserted his Fifth Amendment Privilege when asked questions of a criminal nature; questions which have no bearing on his abuse of process claim against Edwards. A true and correct copy of Epstein's March 17, 2010 Deposition is attached hereto as "Exhibit B." Contrary to Edwards's allegations in his Motion, the following questions were posed to, and answered by, Epstein:

> Q. Why are you suing L.M.?
> MR. PIKE: Form.
> THE WITNESS: L.M. is part of a conspiracy with Scott Rothstein, Bradley Edwards, creating -- excuse me -- creating fraudulent cases of a sexually

charged nature in which the U.S. Attorney has already charged the firm of Rothstein, a firm of which Bradley Edwards is a partner, was a partner, with creating, fabricating malicious cases of a sexual nature, including cases with respect to me, specifically, in order to fleece unsuspecting investors in South Florida out of millions of dollars.

See Deposition of Jeffrey Epstein, p. 13; lines 9-21.

Q. Your Complaint in this action alleges that L.M. made claims for damages out of proportion to her alleged damages. What does that mean?
A. It means what it says.
Q. I don't understand it. Explain it to me.
MR. PIKE: To the extent you can answer that question without disclosing my conversations with you or Mr. Critton's conversations with you, as well as my work product, you can answer the question.
THE WITNESS: I believe that as part of the scheme to defraud investors in South Florida out of millions of dollars, claims of outrageous sums of money were made on behalf of alleged victims across the board. And the only way -- in fact, Scott Rothstein sits in jail. And what I've read in the paper, claims that I've settled cases for $200-million, which is totally not true. She has made claims of serious sum of money, which is outrageous.
BY MR. SCAROLA:
Q. How much have you settled claims for?
MR. PIKE: I'm going to instruct you not to answer that question.
MR. SCAROLA: And the basis of that instruction is?
MR. PIKE: Confidential settlement agreements, to the extent that they exist. And the terms would be confidential.

Id. at p. 19; line 7- p. 20; line 10.

BY MR. SCAROLA:
Q. Did Brad Edwards do anything that he shouldn't have done that forms the basis of your lawsuit against him?
MR. PIKE: Form.
THE WITNESS: Yes, many things.
BY MR. SCAROLA:
Q. List them for me, please.
A. He has -- he has gone to the media out of, I believe, in an attempt to gin up these allegations. He has contacted the media. He has used the media for his own purposes. He has brought discovery -- he has engaged in discovery proceedings that bear no relationship to any case filed against me by any of his clients.
His firm, which he's the partner of, has been accused of forging a Federal Judge's signature.

Id. at p. 23; lines 3-19.

BY MR. SCAROLA:
Q. Besides having gone to the media in an attempt to, quote, gin up, unquote, these allegations and engaged in what you contend to be irrelevant discovery proceedings, what else did Mr. Edwards, personally, do that forms the basis for this lawsuit?
A. Mr. Edwards, personally, engaged with his partners, Scott Rothstein, who sits in a Federal jail cell, potentially for the rest of his life, he shared information, what I've been told and -- excuse me -- what I've read in the newspapers, 13 boxes of
information that had my name on it, with other attorneys at his firm.
He counseled his clients to maintain a position alleging multi-million dollar damages in order for them to scam local investors out of millions of dollars.
He and his -- many of his other partners already under investigation by the FBI and the U.S. Attorney have been accused by the U.S. Attorney of running a criminal enterprise.

Id. at p. 25; lines 5-25.

BY MR. SCAROLA:
Q. Okay. What media did Mr. Edwards go to?
A. I am aware of at least the Daily News in New
York City.
I have been told by other people that there
were other media, local media.
I've been told that the -- his investigator
was sent to California to harass people representing
his -- Brad Edwards' investigator -- representing
fictitiously, fraudulently that he was a FBI agent to
try to gather information for Mr. Edwards' claims.

Id. at p. 26; lines 5-15.

BY MR. SCAROLA:
Q. What does an investigator going to California have to do with Mr. Edwards allegedly going to the media in an attempt to, quote, gin up, unquote, these allegations?
MR. PIKE: Please answer the question.
THE WITNESS: Good. It's part of Mr. Edwards' scheme to involve people who have nothing to do with any of his cases in order to, in fact, go back to the media and gin up his stories and make false allegations of people that have a sexually charged nature cases in order to attempt to fleece investors, local investors out of millions of

Page 29
dollars.
His firm has been accused by the U.S. Attorney of manipulating the media, by hiring investigators, by illegal wire taps, by illegal methods of eavesdropping in order to go to the media and generate cases.

Id. at p. 28; line13- p. 29; line 6.

BY MR. SCAROLA:
Q. You said you were told by other people that he went to other media representatives?
A. Yes, sir.
Q. Who are the other people that told you that?
Page 30
A. I don't recall at the moment.
Q. What did these other people who you don't remember tell you Mr. Edwards did with respect to other media representatives besides the Daily News?
A. Again, the question again?
Q. What did these other people tell you Mr. Edwards did with respect to going to other media?
MR. PIKE: Form.
THE WITNESS: Mr. Edwards went to the media to gin up his cases in order that the Rothstein firm could generate profits, falsely taking in investors, creating false stories to the local medias and making statements to local press regarding false claims made by his clients in order that Scott Rothstein, who currently sits in jail, could defraud, along with his other partners of his firm, local Florida investors, Mr. Scarola, out of millions of dollars.
BY MR. SCAROLA:
Q. When did these other people whose identity you can't remember tell you these things that Brad Edwards did?
A. Sometime in the past year.
Q. How many other people were there who told you these things about Mr. Edwards?
A. I don't recall with specificity.
Q. Well, do you recall in any degree how many there were?
A. I would say, probably five to ten.

Id. at p. 29; line 22- p. 31; line 4.

BY MR. SCAROLA:
Q. What specifically did Mr. Edwards allegedly communicate to the Daily News to, quote, gin up these allegations, unquote?

A. The newspapers have quoted Mr. Edwards -- not quoted Mr. -- newspapers have made allegations referred to as Mr. Edwards' statements.
MR. SCAROLA: Would you read the question back, please, Sandy?
(Pending question was read.)
MR. PIKE: Did he answer your question? MR. SCAROLA: No.
MR. PIKE: Are you asking him again?
THE WITNESS: So you're asking the question again?
BY MR. SCAROLA:
Q. Yes.
THE WITNESS: Sorry. Could you repeat the question again?
(Pending question was read.)
THE WITNESS: He alleged that third parties had already been involved in some allegations to do with sexual misconduct.
BY MR. SCAROLA:
Q. Which third parties?
A. I don't recall sitting here today.
MR. PIKE: Form.
THE WITNESS: If I recall with specificity, if I had the articles in front of me, I would be able to recall. Maybe next time.
BY MR. SCAROLA:
Q. What does "gin up these allegations" mean?
MR. PIKE: Form.
THE WITNESS: It means craft allegations of multi-million dollar cases; in fact, alleging in L.M.'s case damages of $50 million, settlements in order for Scott Rothstein and the rest of Mr. Edwards' partners to fleece unsuspecting investors out of millions and millions of dollars based on cases that didn't exist or alleged cases that I had settled.

Id. at p. 32; line 6-p. 33; line 21.

Q. Was your reference to, quote, gin up these allegations, unquote, a reference to allegations made against you?
MR. PIKE: Form.
TilE WITNESS: As part of the vast conspiracy of the Rothstein firm and Mr. Edwards' participation in it, it has been alleged that many cases were fraudulently brought -- alleged that have been brought; ginned up, meaning, crafted, multi-million dollar numbers put on cases in order to fleece investors, where his partner, Scott Rothstein, currently sits in jail for just those purposes, Mr. Scarola.
BY MR. SCAROLA:
Q. My question to you is: Did the reference to, quote, gin up these allegations refer to allegations against you?
A. Reported in the newspaper the answer is, yes. And others, but specifically me, yes, by the newspaper reports.
Q. Specifically what are the allegations against you which you contend Mr. Edwards ginned up?

A. I would like to answer that question. A, many of the files and documents that we've requested from Mr. Edwards and the Rothstein firm are still unavailable.
With respect to anything that I can point to today, I'm, unfortunately, going to have to take the Fifth Amendment on that, Sixth and 14th

Id. at p. 34; lines 3-25.

Q. What specific discovery proceedings did
Mr. Edwards engage in which you contend for the basis
for your lawsuit?
A. The discovery proceedings of bringing my attorneys to various people that had nothing to do with any of his clients or these lawsuits.
Q. Which various people? Who?
MR. PIKE: Form.
THE WITNESS: For example, he tried to depose Bill Clinton, strictly as a means of getting publici1y so that he and his firm could fraudulently steal, craft money from unsuspecting investors in South Florida out of millions of dollars.

Id. at p. 36; lines 10-23.

Q. Okay. So part of the basis of your lawsuit is
that Mr. Edwards allowed members of his own law firm to
see 13 boxes of information; is that correct?
A. No, that's not correct. My claim is that the boxes of information that were shown to investors by Mr. Edwards' partners, 13 boxes that we've been told by the press contain multiple cases, fraudulently · and if you like the word·· fabricated in order to fleece investors out of money. The 13 boxes were shared with investors, Mr. Edwards, Mr. Edwards' partners and some of those partners currently under indictment, the others already sitting in jail.

Id. at p. 38; lines 11-22.

Q. Which newspaper said which case was
fabricated?
A. Bob Norman's blog said most of the cases were fabricated, to my best recollection.
The Scherer Complaint alleged many fabricated cases, sir.
Q. Well, which of Mr. Edwards' cases do you contend were fabricated?
A. Again, we've requested most of the ·· information from the bankruptcy trustee. We've been unable·· Mr. Edwards has not given us the total file, but respect to any individual, I would have·· at the moment I would have to assert my Fifth, Sixth and 14th Amendment claim, sir.

Id. at p. 39; lines 7-20.

Q. My question is: By whom was Mr. Edwards employed at the time that he initiated litigation against you? Do you know the answer to that question?
A. I'd have no way of knowing the answer to that question, sir.
Q. Among the allegations of wrongdoing against Mr. Edwards which you contend form the basis of this lawsuit is something having to do with sending an investigator to California.
Would you tell me, please, more specifically what it is that Mr. Edwards did with regard to sending an investigator to California which you contend justifies a legal claim against Mr. Edwards.
MR. PIKE: Form. And also mischaracterizes the witness' testimony.
THE WITNESS: Reported widely in the newspapers is the use of illegal activities, wire taps, and methods by the Rothstein firm while Mr. Edwards had basically been bringing these cases.
The investigator, Mr. Fisten, who's mentioned in the Complaint, represented himself as an FBI agent, falsely represented himself as an FBI agent.
BY MR. SCAROLA:
Q. Do you have any personal knowledge of anything that Mr. Fisten did while Mr. Fisten was in California?
MR. PIKE: To the extent that you can answer that question without disclosing my conversation or my firm's conversation or any of your attorneys' conversations with you, you can answer the question.
THE WITNESS: I'm sorry. Based on attorney/client privilege, I can't answer.

Id. at p. 48; line 1- p. 49; line 11.

BY MR. SCAROLA:
Q. Do you have any personal knowledge that Bradley Edwards was involved in any egregious civil litigation abuses?
MR. PIKE: Form. Confusing.
THE WITNESS: It's widely reported in the newspaper that Mr. Edwards' firm engaged in wild discovery processes, illegal activities, illegal eavesdropping in order to fleece unsuspecting investors in South Florida out of millions in dollars by crafting, fabricating malicious cases of a sexually charged nature in order to perpetrate a fraud.
BY MR. SCAROLA:
Q. Do you have any personal knowledge that Bradley Edwards ever forged Federal Court Orders and/or Opinions?
A. It's attorney/client privilege.

Q. Do you have any personal knowledge that Bradley Edwards was ever involved in the marketing of non-existing Epstein settlements?
MR. PIKE: Same instruction.
THE WITNESS: I'm sorry. I would like to answer that question, but on attorney/client privilege I cannot today.

Id. at 52; line 1- p. 53; line 4.

Q. It is alleged in your Complaint that you were subject to, quote, abusive investigatory tactics. Other than those matters previously referred to in earlier questions, is it your contention that Bradley Edwards had any personal involvement in any other, quote, abusive investigatory tactics?
MR. PIKE: Form.
THE WITNESS: It's been widely reported in the newspapers that Mr. Edwards' firm was engaged in widely -- wildly abusive practices throughout the State of Florida in order to fleece unsuspecting investors out of millions of dollars.
The U.S. Attorney's Complaint alleges his finn engaged in a corrupt criminal enterprise.
Mr. Scherer's Complaint alleges monstrous amounts of fraud and discovery abuse.
I have no personal knowledge, separate from the attorney/client privileged information, regarding Mr. Edwards.

Id. at 53; lines 6-24.

Q. Who are those hardworking and honest lawyers on whose behalf you are bringing this Complaint?
MR. PIKE: Okay. Form. Mischaracterizes the Complaint itself.
To the extent you understand that question, you can attempt to answer, if you recall.
THE WITNESS: Yes.
The U.S. Attorney, sir, has accused the Rothstein firm of misusing the entire legal system, a level of abuse never seen before in the United States history, of forging documents, an affront to any decent lawyer, signing Judge's Orders, sending false statements to other lawyers. The people who have been -- excuse me -- the Complaint by the U.S. Attorney, in fact, describes the behavior of the
Jaw firm, as well as Mr. -- my Complaint says, Mr. Edwards being a part of that.

Id. at 57; lines 9-25.

> Q. I want to know who the, quote, "hardworking and honest lawyers" are that are referred to in that section of your Complaint.
> A. My attorneys, at least, are honest.

Id. at 59; lines 11-14.

> Q. Did you read the Complaint before it was filed?
> A. It was a while ago, yes, sir.
> Q. And did you approve the Complaint prior to its filing?
> A. Yes, sir.

Id. at 62; lines 7-12.

> Q. ls that what you meant to say?
> A. What I meant to say, it is -- seems to me somewhat unclear -- is that the Rothstein firm, along with Mr. Edwards, is part of a criminal enterprise, the largest -- excuse me -- the largest criminal enterprise in South Florida's history, forging Judges' signatures, engaging in illegal wire taps, illegal behaviors. And part of this lawsuit should vindicate, which means, I believe should set right.
> And if it's not clear, the Rothstein firm compromised the core values of our legal justice system. It abused every -- many of the precepts, the most basic values of the American justice system.
> And, in fact, I believe this lawsuit, part of the reason for filing this lawsuit, it will disclose the various techniques of attorney/client privilege, abuse of technique, abuse of discovery, illegal wire taps, forging signatures engaged in by both Mr. Edwards and his firm.
> Q. So it is your contention that Mr. Edwards was part of a criminal enterprise?
> A. Yes, it is.

Id. at 63; lines 4-25.

> Q. Have you ever personally witnessed Bradley Edward -- Edwards engaged in wire fraud?
> A. How would one -- I'm not sure how anyone would personal -- have personal knowledge, witness someone engaging in wire fraud, unless they were simply sitting over their computer looking at their bank accounts. So, unfortunately, I would have to say, no, sir.
> Q. Have you ever personally witnessed Bradley Edwards engaged in money laundering?
> MR. PIKE: Form.
> THE WITNESS: Again, sir, the U.S. Attorney's Complaint of the Rothstein firm alleges money laundering, wire fraud, mail fraud, RICO claims of Mr.

Edwards' partners and his firm, calling the firm the largest criminal enterprise in South Florida's history, accused of fabricating malicious cases, sir, of a sexually charged nature in order to fleece unsuspecting South Floridians out of millions of dollars.
Q. And I'm trying to find out, Mr. Epstein, whether you have any evidence whatsoever that
Mr. Edwards ever personally participated in any of that
wrongdoing?
MR. PIKE: To that question, to the extent you
Page 67
can answer it without violating attorney/client and
work product, you can answer the question.
THE WITNESS: I'm afraid it will be
attorney/client privilege, sir.
BY MR. SCAROLA:
Q. Do you have any evidence -- knowledge of any
evidence whatsoever that Mr. Edwards ever participated
in any effort to market any kind of investment in
anything?
A. I would have to claim attorney/client
privilege on that, sir.

Id. at 66; line 1-page 67; line 11.

Q. Your Complaint alleges that Rothstein and others in RRA were using RRA to market investments.
Who are the others referred to in the Complaint?
A. From my understanding of the U.S. Attorney's
Complaint, from Mr. Scherer's Complaint, it is the partners and people who held themselves out to be partners of the Roth -- Scott Rothstein, including
Mr. Berger, Mr. Adler, Mr. Edwards and other people
associated with the firm like Mr. Fisten, Diane Villegas, if that's how you pronounce her name, Russell Adler, and many of the other partners of his firm currently under investigation by either the Florida
or the U.S. Attorney or FBI or all of the above, sir.

Id. at 68; lines 3-25.

Q. Do you have any evidence that Brad Edwards sold, allowed to be sold and/or assisted with the sale of an interest in non-settled personal injury lawsuits?
MR. PIKE: Form.
THE WITNESS: The newspapers have widely reported that the Rothstein firm engaged in illegal structured settlements of cases of a sexual nature, including specifically, me. We have subpoenaed the documents from Mr. Edwards and his firm and we have not been able to get them as of yet.

I am confident that once we do, I will be able
to answer your questions with more specificity.

Id. at 83; lines 11-22.

Q. Have you ever socialized with Tommy Mottola?
A. This is the type of questions where people who have nothing to do with this case whatsoever have been brought into the case by Mr. Edwards in an attempt to simply imperil my relationships with social friends and serves as an example of why this case has been brought against Mr. Edwards and his firm, sir.

Id. at 90; lines 9-15.

Q. Okay. So because those names are in your Complaint, I'm asking you about the people you named.
Have you had a social relationship with Tommy Mottola?
A. The names in my Complaint are strictly as a
reaction to the abusive discovery process by
Mr. Edwards, his partners, Scott Rothstein, who sits in jail, in an attempt to imperil my friendships.
But, yes, I have socialized with Mr. Mottola.

Id. at 91; lines 11-19.

Q. Have you had a social relationship with David Copperfield?
A. As a reaction to, once again, the abusive discovery process of bringing in names of people that have absolutely nothing to do with any of Mr. Edwards', Mr. Rothstein's or their clients' claims, by bringing in the names of friends of mine strictly in an attempt to stress my relationships, imperil my business relationships, I'm going to say, yes, I do know
Mr. Copperfield.
Q. Have you ever socialized with David Copperfield?
A. Again, as --
MR. PIKE: Form.
THE WITNESS: Sorry.
It's a typical Edwards/Rothstein strategy of trying to involve well-known people in maliciously fabricated cases in order to fleece investors out
of millions of dollars. They brought up names in attempts at abuse of discovery process to try and
Page 93
take discovery of people who have nothing to do
with this case.
Did I socialize with David Copperfield? The
answer is, yes.

Id. at page 92; line 11-page 93; line 4.

> Q. Have you ever had a social relationship with
> Bill Richardson, Governor of New Mexico and formerly
> U.S. Representative and Ambassador to the United
> Nations?
> MR. PIKE: Form.
> THE WITNESS: As is typical of the Edwards scheme, along with his partner, Scott Rothstein, who sits in jail, what they attempted to do was bring in any celebri1y I might have known, well-known people, in an attempt to strictly imperil my relationships with these people where these people have no bearing whatsoever on any of their claims or cases.
> Yes, I do have a social relationship.

Id. at page 93; line 18-page 94; line 6. The questioning next turned to damages Epstein suffered as a result of RRA and Edwards's actions in this case:

> Q. What are the damages that you claim to have
> suffered as a consequence of any wrongdoing on the part
> of Bradley Edwards?
> MR. PIKE: Form.
> THE WI1NESS: The cost of ridiculous
> litigation, of having my attorneys prepare
> responses to wildly irrelevant discovery in various
> locations at a minimum, sir.
> BY MR. SCAROLA:
> Q. Which lawyers?
> A. Burman Critton, Jack Goldberger, and a bunch
> of the others, sir.

Id. at at 116; lines 8-19.

> Q. I want as much information as you can give me
> about this element of damage which you claim; and, that
> is, the cost of legal services that you claim to be
> damages in this case.
> A. Okay.
> MR. PIKE: Form. And move to strike.
> THE WITNESS: Mr. Roy Black.
> BY MR. SCAROLA:
> Q. Okay. Who else?
> A. Mr. Marty Weinberger. Mr. Alan Dershowitz.
> Mr. Jay Lefkowitz. The firm of Burman Critton Luttier.
> That's it for the moment.

Q. How much have you paid the law firm of Burman Critton and Luttier which you claim is damages?
A. Hundreds of thousands of dollars, sir.
Q. How much?
A. I don't have that figure offhand.
Q. Can you give us any better figure than hundreds of thousands of dollars?
A. No, not sitting here today.

Id. at at 117.

Q. Are there any other elements of damage, apart from the money paid to lawyers?
A. Yes, sir.
Q. What?
A. Tue stress and emotional damage of imperiling my friendships and business relationships with no relevance whatsoever to these cases, brought by a firm that whose partner sits in a Federal prison, who engaged in discovery to harass my friends and social contacts with no consideration or relevance to this case whatsoever, in an attempt to simply fleece -- partly fleece investors in South Florida out of millions of dollars, sir.

Id. at 120; lines 12-24.

Q. Do you hold Mr. Edwards responsible for all of the damages that you have described?
MR. PIKE: Form.
THE WITNESS: It's difficult for me to proportion the damages that I have described between Mr. Edwards, his partner, who is currently in jail, his -- the other people named in the Complaint. Hopefully a jury will do that.

Id. at 125; lines 6-14.

Accordingly, contrary to Edwards's assertion in his Motion, Epstein consistently answered the questions that are germane to the claims made in this litigation and his reasons for filing the same; including what he believed at the time he filed suit and the damages he suffered as a result of the actions of the Defendants/Counter-Plaintiffs at that time. As such, Epstein can, and should, be able to present evidence, including the June 30, 2017 affidavit, to support his defense.

Conversely, Edwards has still, to this very day, steadfastly refused to answer relevant questions regarding the actions he took in the Epstein cases while Edwards was a partner at RRA **or** his damages; instead he has hidden behind a plethora of privileges, including such novel ones as "government privilege," notwithstanding that it is he who is prosecuting this matter, who is specifically asserting the propriety of his actions in his litigation of the cases while at RRA, and who bears the burden of proof. As such, not only should Edwards's Motion to preclude evidence be denied, but Edwards should also be precluded from presenting any evidence or testimony for which he has asserted *any* privilege herein.

II. EPSTEIN HAS CONSISTENTLY PROVIDED TESTIMONIAL AND DOCUMENTARY EVIDENCE TO SUPPORT HIS DEFENSE OF THIS ACTION AND HIS GOOD FAITH AT THE TIME HE BROUGHT HIS ABUSE OF PROCESS CLAIM AGAINST EDWARDS

What seems to be lost on Edwards is the fact that the crux of Epstein's claims has always been Epstein's reasonable suspicion of improper conduct by Edwards's in his litigation of the three Epstein cases during the time period while Edwards was a Partner at RRA. Epstein does not allege that Edwards brought the Epstein cases against him in bad faith, and although that is what Edwards would like to litigate, the sole issue here is **what Edwards did in the Epstein cases while he was a Partner at RRA**; while these cases were used to fleece investors out of millions of dollars in furtherance of a Ponzi Scheme. Indeed, Epstein could not testify as to what happened behind the scenes at RRA; by definition that would have to come from Edwards, third parties, and documentary evidence. While there was certainly extrinsic evidence in Epstein's possession prior to filing suit to create a reasonable suspicion of wrongdoing by Edwards during that relevant period, *see Statement of Undisputed Facts and Affidavit in Epstein's Motion for Summary Judgment,* Edwards has, continually, consistently, and systematically blocked all attempts to obtain relevant evidence

regarding his activities in the Epstein cases while he was a Partner at RRA. *See Depositions of Bradley Edwards and Discovery Responses of Bradley Edwards;* all of which are subjects of Motions to Compel pending before this Court.

Moreover, in the few responses Edwards provided to Epstein's Request for Admissions, Edwards admitted to filing the Federal L.M. Complaint while Edwards was a partner at RRA and only months before the Ponzi scheme imploded; the one that was shown to investors in order to persuade them to invest tens of millions of dollars while the Ponzi Scheme was in desperate need of funds to prevent it from unraveling, and that he neither served it on Epstein nor prosecuted it. Edwards also admitted that he included false allegations in that Federal L.M. Complaint regarding oral sex with Epstein, though he later blamed it on inadvertence. *See Edwards's Responses to Requests for Admissions,* attached hereto as "Exhibit C." This is also evidence upon which Epstein relied not only in the filing of his case against Edwards, but also in the prosecution of same.

Finally, there is neither Florida case law nor a rule of civil procedure pursuant to which the striking of Epstein's affidavit is warranted. Edwards does not contend that Epstein failed to comply with a court order as contemplated by Rule 1.380 of the *Florida Rules of Civil Procedure*; nor does Edwards assert that Epstein's affidavit contains material that should be stricken from a pleading as delineated in Rule 1.140 of the *Florida Rules of Civil Procedure* governing Motions to Strike. As such, Edwards's Motion to Strike is improper. *See Van Valkenberg v. Chris Craft Indus., Inc.*, 252 So. 2d 280, 284 (Fla. 4th DCA 1971) ("a motion to strike is not favored and is viewed with skepticism"). Consequently, because Epstein's affidavit of June 30, 2017 is consistent with his Complaint against Edwards, his sworn testimony at deposition regarding the facts known to him at the time he filed his

Complaint and each amendment thereto, which is also supported by all documentary evidence also provided with Epstein's Motion for Summary Judgment, and is also consistent with Edwards's responses to the few discovery requests to which he did not object or assert a privilege, Edwards's Motion should be denied.

III. AN ADVERSE INFERENCE WOULD NOT BE PROPER IN THIS CASE

A trial court's decision to allow an adverse inference is always discretionary. In a civil proceeding, the drawing of a negative inference is a permissible, but not an inevitable, result of a party's invocation of the Fifth Amendment. While the law does not forbid adverse inferences against civil litigants who refuse to testify on Fifth Amendment grounds, it does not mandate such inferences. As such, the trial court must determine whether a negative inference is an appropriate response to the invocation of the Fifth Amendment in a particular civil case. *In re Carp*, 340 F.3d 15, 23 (1st Cir. 2003); *Baxter v. Palmigiano*, 425 U.S. 308 (1976). *See also Doe ex rel. Rudy-Glanzer v. Glanzer*, 232 F.3d 1258, 1264 (9th Cir. 2000) ("The Baxter holding is not a blanket rule that allows adverse inferences to be drawn from invocations of the privilege against self-incrimination under all circumstances in the civil context"). *Rudy-Glanzer*, 232 F.3d at 1264 ("[T]he key to the Baxter holding is that such [an] adverse inference can only be drawn when independent evidence exists of the fact to which the party refuses to answer. Thus, an adverse inference can be drawn when silence is countered by independent evidence of the fact being questioned, but that same inference cannot be drawn when, for example, silence is the answer to an allegation contained in a complaint); *Centennial Life Ins. Co., v. Nappi*, 956 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.").

In other words, a party cannot be found liable solely upon the basis of reliance on Fifth Amendment; there must be other evidence. *Baxter*, 425 U.S. at 318; *Lefkowitz*, 431 U.S. at 808, n. 5;*Lasalle Banks Lake View v. Seguban*, 54 F.3d 387 (7th Cir. 1995); *National Acceptance Co.of America v. Bathalter*, 705 F.2d 924 (7th Cir. 1963) (assertion of Fifth Amendment in an answer to a complaint does not constitute an admission of the allegations and does not relieve the plaintiff of the need to adduce proof). Accordingly, this court must analyze the questions to which Epstein asserted his Fifth Amendment Privilege before it can determine whether or not an adverse inference may be permitted. Here, Edwards has neither indicated in his Motion which questions and invocation responses he is seeking to have this Court apply the inference, nor established the permissibility of the inference as explained above. As such, a "blanket" entitlement to an adverse inference is impermissible.

Furthermore, if the party invoking his Fifth Amendment privilege has an honest explanation that would defeat civil liability (while simultaneously incriminating him), he is faced with a Hobson's choice; meaning he can suffer the risk of an adverse inference or, alternatively, he can provide sworn testimony that may be used against him at a later criminal proceeding. A review of the deposition questions and answers in this matter would establish that such is the case here. Edwards sued Epstein for Abuse of Process and Malicious Prosecution. Epstein prevailed on the Abuse of Process claim, and all that remains is Edwards's claim for Malicious Prosecution. When asked in deposition why he filed suit and upon what facts he based this decision, Epstein answered Edwards's questioning; he **did not** invoke his rights as to the issues germane to this litigation; to wit: why he filed suit and what his damages were. *See Exhibit B*. When Edwards's inquiry turned to questions regarding Epstein's criminal case and the facts surrounding the allegations made by the plaintiffs in the

civil suits Edwards had already settled with Epstein, which are irrefutably **not** an issue in this civil case (or even necessary to an element of Edwards's causes of action), Epstein asserted his Fifth Amendment privilege. As such, permitting an adverse inference to be drawn regarding testimony (or lack thereof) that is not part of the litigation is impermissible.

Moreover, Epstein's last version of the Complaint against Edwards was devoid of any allegations about conduct of any of Edwards's clients, and was narrowly amended to cite, as a basis for the abuse of process claim, only litigation activity during the time Edwards was a partner at RRA. Consequently, testimony from Epstein about the truth or falsity of Edwards's three clients' claims, any criminal investigation, or the claims of any other third parties has no bearing whatsoever on Edwards's challenged litigation misconduct. In other words, testimony as to matters to which Epstein would have to plead the Fifth Amendment are not, and would not be, relevant to Epstein's abuse of process claims against Edwards and preclusion of evidence or an adverse inference would be improper.

While there is no Florida case directly on point, Florida courts have held that trial courts **may** draw an adverse inference against a party in a civil action who invokes his privilege against self-incrimination. The Fourth District Court of Appeal held that in a civil action, the Fifth Amendment does not forbid adverse inferences against parties "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) (quoting *Baxter v. Palmigiano*, 425 U.S. 308, 96 S. Ct. 1551, 47 L. Ed. 2d 810 (1976)(emphasis added)). Accordingly, the evidence to which the party is refusing to testify must be probative, relevant, and material to the case. Here, because the underlying-or potential- criminal investigation against Epstein is neither relevant nor material to the current litigation, evidence relating to same would not be

probative to the case.

Moreover, in the instant case, it is evident from Edwards's witness and exhibit list, as well as his own continued assertion of privileges, that he would like to be prosecuting a criminal case against Epstein, or litigating a case he already settled with Epstein on behalf of one of his three clients or even other plaintiffs that he did not represent while he was a partner at RRA and litigating against Epstein; but such is not the case. Rather, Edwards must prove each element of a Malicious Prosecution case; including want of probable cause and damages, which he cannot do, so instead he is attempting to circumvent the evidence upon which Epstein relied in filing suit, and the fact that he was Rothstein's law partner, and prejudice and inflame the jury with allegations of criminal misconduct by Epstein and Epstein's assertion of his Fifth Amendment privilege in response to the harassing questioning to which he was subjected. *See Exhibit B.*

The case of *Nationwide Insurance Co. v. Richards*, 541 F.3d 903 (9th Cir. 2008) is instructive. In *Nationwide*, the district court precluded Angelina, a claimant under the insurance policy who was accused of being involved in her husband, the insured's, murder, from testifying on relevant matters to which she had previously asserted her Fifth Amendment privilege. The trial court prohibited her from testifying "only as to . . . her involvement (or lack thereof) in Bryan's murder. The court's order was narrowly tailored to impose upon Angelina only that detriment necessary to prevent unfair prejudice to Keith (the adverse party)." *Id.* at 911. The Court stated: "Because the privilege is constitutionally based, the competing interests of the party asserting the privilege, and the party against whom the privilege is invoked 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." *Id.* at 910 (citing Doe ex rel. Rudy-Glanzer v. Glanzer, 232 F.3d1258, 1265 (9th Cir. 2000) (addressing propriety of adverse inference as a consequence of asserting Fifth Amendment privilege during pretrial deposition).The *Nationwide* Court went further in its analysis of the applicability of an adverse inference, and stated:

> under certain circumstances . . . an adverse inference from an assertion of one's privilege not to reveal information **is too high a price to pay."** *Doe ex rel. Rudy-Glanzer v. Glanzer, 232 F.3d 1258, 1265 (9th Cir. 2000) (emphasis added in quote).*"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." *Id.* (citing *Graystone Nash,* 25 F.3d at 192). 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." *Id.* (citing *Serafino v. Hasbro, Inc.,* 82F.3d 515, 518-19 (1st Cir. 1996). The district court must determine "whether the value of presenting[the] evidence [is] substantially outweighed by the danger of unfair prejudice" to the party asserting the privilege. *Id.* at 1266 (citing Fed. R. Evid. 403; *Brink's Inc. v. City of New York,* 717 F.2d700, 710 (2d Cir. 1983)). Moreover, the inference may be drawn only when there is independent evidence of the fact about which the party refuses to testify. *Id.* at 1264.

Id. at 912. Accordingly, before this Court may conclude that Edwards is entitled to an adverse inference, or any use of Epstein's prior testimony in which he invoked his Fifth Amendment privilege, it must first make findings as delineated by the case law above, as here, Epstein is the defendant in the civil suit being prosecuted by Edwards, as well as the target of Edwards's litigation against the federal government in the United States District Court for the Southern District of Florida, *Doe v. United States,* No. 08-cv-80736-KAM (S.D. Fla.) (the CVRA case) in which Edwards seeks to subject Epstein to criminal prosecution.

Finally, Edwards's ambiguous and overly-broad request that Epstein be precluded "from offering evidence or testimony as to any matter about which he has declined on

the basis of the assertion of privilege to provide pre-trial discovery" completely disregards the fact that Epstein has timely and properly provided Edwards with his trial exhibit and witness list. If there is a specific document/item/witness with which Edwards takes issue, Edwards should properly identify same, either through a proper motion or at trial, so that this Court can properly examine the issue and rule on Edwards's request that it be precluded. *See Tomlinson-McKenzie v. Prince,* 718 So. 2d 394, 396 (Fla. 4th DCA 1998); *Aguila-Rojas v. City Management Group Corp.,* 606 So.2d 765, 766 (Fla. 3d DCA 1992).

In the case at hand, Edwards has engaged in a systematic effort to avoid any discovery into his own conduct, including the entire time during which Epstein's underlying abuse of process claim was pending, and at the same time proclaimed the propriety of his actions based only on evidence unrelated to the actual civil claims of his own clients. To avoid any recognition of this fact, he has now attempted to shift the focus of his sole remaining count against Epstein to an examination of allegations of Epstein's alleged criminal conduct, as well as allegations against Epstein in civil claims against Epstein by persons other than Edwards's own clients. At best, the issues that Edwards insists on making central to his case are ancillary, and even if adverse inferences were granted on those issues, those adverse inferences would not be dispositive of whether Epstein had probable cause for filing a lawsuit against Edwards. Without an absence of probable cause, there is no claim for Malicious Prosecution, regardless of any malice that Edwards hopes to have the jury infer from circumstantial evidence relating to allegations of criminal and civil misconduct by Epstein.

Accordingly, because Epstein's amended Abuse of Process claim was not a denial of the underlying claims of Edwards's clients, but rather was based on Edwards's pursuing a litigation strategy that had nothing to do with his clients' claims but that sought instead to perpetuate the largest Ponzi scheme in south Florida history, Edwards should not be permitted to try and prejudice the jury with irrelevant material in order to deflect from his own behavior.

CONCLUSION

In reliance upon the facts and case law cited above, Epstein requests that this Court deny Edwards's Motion to Strike Epstein's June 30, 2017 affidavit, and his ambiguous and improper Motion in Limine, or alternatively Order Edwards to identify with specificity the evidence for which he seeks preclusion.

I hereby certify that a true and correct copy of this Response was served on all parties listed on the attached service list, via electronic service, this October 13, 2017.

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