

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

JEFFREY EPSTEIN,  
Plaintiff,

Complex Litigation, Fla. R. Civ. Pro. 1201  
Case No. 50 2009 CA 040800XXXXMBAG

vs.

SCOTT ROTHSTEIN, individually,  
BRADLEY J. EDWARDS,  
individually

Defendants.

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**PLAINTIFF/COUNTER-DEFENDANT JEFFREY EPSTEIN'S RESPONSE IN  
OPPOSITION TO DEFENDANT/COUNTER-PLAINTIFF BRADLEY EDWARDS'  
MOTION FOR LEAVE TO AMEND TO ASSERT CLAIM FOR PUNITIVE DAMAGES**

Plaintiff/Counter-Defendant, JEFFREY EPSTEIN ("Epstein"), by and through his undersigned counsel, hereby offers the following response in opposition to Defendant/Counter-Plaintiff EDWARDS' ("Edwards") Motion for Leave to Assert a Claim for Punitive Damages ("motion") and states:

**SUMMARY OF ARGUMENT**

Edwards' latest kitchen-sink motion for leave to add punitive damages is utterly frivolous, obscuring the relevant issues and flatly ignoring the applicable legal standards. It is premature because it attacks a non-existent complaint and no operative complaint was pending. Second, there is no basis for imposing punitive damages based on the mere fact that Epstein did not proceed with certain claims against Edwards that had been included in the initial complaint. Third, claims against him were dropped does not provide a basis for asserting punitive damages for abuse of process. Third, to recover punitive damages. Edwards must show that Epstein's *filing of his abuse of process claim against him* – which is the gravamen of Edwards' abuse of

process claim against Epstein -- was done "with malice, moral turpitude, wantonness, willfulness, or reckless indifference to the rights of others." Edwards *has not done so*. His motion boils down to a legally insufficient litany of reasons why Epstein purportedly will not be able to prove his abuse of process claim against Edwards --e.g., Edwards was not involved in the Rothstein Ponzi scheme, Epstein was not the victim of a scheme to "pump" up the victim cases, litigation privilege, and sword and shield doctrine. But Edwards' arguments refuting Epstein's prior abuse of process charge or supporting his own counterclaim are entirely irrelevant to the recovery of punitive damages because they do not establish "willful and wanton misconduct [by Epstein] of a character no less culpable than what is necessary to convict of criminal manslaughter." *Tiger Point Golf v. Hipple*, 977 So. 2d 608, 610 (Fla. 1<sup>st</sup> DCA 2007). Edwards' motion should not be permitted to obscure the fact that he *cannot* seek punitive damages based upon the misconduct alleged in the underlying victims' suits. Rather, the punitive damages sought by Edwards are limited to Epstein's filing of an abuse of process claim against him.

Edwards has not demonstrated, and cannot demonstrate, that the mere *filing* of an abuse of process claim that may not ultimately succeed provides the basis for the imposition of punitive damages against the pleader. If Edwards could seek punitive damages based solely on the alleged insufficiency of Epstein's as-yet *unpled* abuse of process claim against him, then Epstein would likewise be entitled to plead punitive damages based on Edwards' filing of a groundless abuse of process counterclaim. Under settled Florida law, abuse of process cannot be based solely on the *filing* of an allegedly groundless claim, which is the crux of Edwards' counterclaim. *See, e.g., Valdes v. GAB Robins N. Am., Inc.*, 924 So. 2d 862, 867 (Fla. 3d DCA 2006)("Valdes' failure to allege any improper willful acts by the appellees during the course of the prior action requires dismissal of the abuse of process claim as well.").

In sum, Edwards' motion for punitive damages is devoid of any evidence that Epstein's behavior in filing an abuse of process claim against him evinces a "reckless disregard of human life . . . or which shows wantonness or recklessness . . ." *Am. Cyanamid Co. v. Roy*, 498 So. 2d 859, 861-62 (Fla. 1986)(check cite). Edwards cannot invoke §57.105, Fla. Stat., to support a claim for punitive damages. He is simply barking up the wrong tree. His motion for leave to amend to assert punitive damages must be denied,

### STATEMENT OF THE CASE AND FACTS

On December 21, 2009, Edwards filed an Answer and Counterclaim to Epstein's December 7, 2009 Complaint. In his Counterclaim Edwards purported to state a claim against Epstein solely for abuse of process, based upon allegations that Epstein asserted his Fifth Amendment rights (¶6); Epstein sought to avoid liability by "employing the extraordinary financial resources at his disposal to intimidate his victims into abandoning their legitimate claims or resolving these claims for substantially less than their just value" (*id.*); Edwards' conduct in the underlying lawsuits was proper (¶8); Epstein filed the instant lawsuit "to intimidate Edwards, L.M. and others into abandoning or settling their legitimate claims for less than their just and reasonable value." (¶9)

On October 19, 2010, Edwards filed his first motion for leave to assert a claim for punitive damages on the ground that *Epstein's* claims against him had no basis and were retaliatory. On April 13, 2011, Epstein filed an Amended Complaint against Edwards, which Edwards moved to dismiss. On July 13, 2011, this Court entered an Order denying Edwards' first motion for leave to assert punitive damages against Epstein and granting Epstein thirty (30) days in which to file an amended complaint.

On July 19, 2011, *when no Complaint by Epstein was even pending*, Edwards filed a renewed motion for leave to assert punitive damages against Epstein. His latest motion is patently insufficient

## ARGUMENT

### 1. EDWARDS' MOTION FOR LEAVE TO AMEND HIS COUNTERCLAIM TO ASSERT A CLAIM FOR PUNITIVE DAMAGES SHOULD BE DENIED

#### A. Legal Framework for Punitive Damages

*1. "Reasonable Basis" Requirement of Section 768.72(1), Fla. Stat.* Before a plaintiff is permitted to allege a claim for punitive damages, he or she must comply with the requirements of Section 768.72(1), Florida Statutes (2011). Section 768.72(1) provides, in pertinent part, as follows:

In any civil action, no claim for punitive damages shall be permitted unless there is a reasonable showing by evidence in the record or proffered by the claimant which would provide a reasonable basis for the recovery of such damages. The claimant may move to amend her or his complaint to assert a claim for punitive damages as allowed by the rules of civil procedure.

§768.72(1), Fla. Stat. (emphasis added). Section 768.72 creates a substantive legal right not to be subject to a punitive damages claim and ensuing financial worth discovery until the trial court makes a determination that there is a reasonable evidentiary basis for recovery of punitive damages. *See Simeon, Inc. v. Cox*, 671 So. 2d 158, 160 (Fla. 1996). Thus, a plaintiff must obtain permission from the trial court to amend the complaint before punitive damages may be asserted and is further obligated to make an evidentiary showing that would provide a reasonable basis for the recovery of such damages, which the trial court must assess. *See Simeon*, 671 So. 2d at 160. Florida's common law and more recent statutory provisions govern whether the required "reasonable basis" is established. The burden to show that there is a reasonable basis for the

recovery of punitive damages is on Edwards. *See Will v. Systems Engineering Consultants*, 554 So. 2d 591, 592 (Fla. 3d DCA 1989). Edwards has undeniably failed, as discussed below, to satisfy that burden.

2. *Florida's Common Law Standard.* The case law in Florida is well-established that the character of misconduct necessary to sustain an award of punitive damages is the same as that required to sustain a conviction for manslaughter. *Carraway v. Revell*, 116 So. 2d 16, 20 (Fla. 1959). *See also Tiger Point Golf v. Hipple*, 977 So. 2d 608, 610 (Fla. 1st DCA 2007) ("The conduct punitive damages properly condemns and hopefully deters is willful and wanton misconduct of a character no less culpable than what is necessary to convict of criminal manslaughter."). The Florida Supreme Court has also declared and reaffirmed that the type of evidence necessary to uphold an award of punitive damages

must be of a "gross and flagrant character, evincing reckless disregard of human life, or of the safety of persons exposed to its dangerous effects, or there is that entire want of care which would raise the presumption of a conscious indifference to consequences, or which shows wantonness or recklessness, or a grossly careless disregard of the safety and welfare of the public, or that reckless indifference to the rights of others which is equivalent to an intentional violation of them."

*White Construction Co. v. Dupont*, 455 So. 2d 1026, 1029 (Fla. 1984) (evidence that an 80,000 pound loader was knowingly operated at top speed with no brakes in the area where people were working was not sufficient to submit the issue of punitive damages to the jury). *See also Chrysler Corp. v. Wolmer*, 499 So. 2d 823, 824 (Fla. 1986) (crash test did not put automobile manufacturer on notice of fuel system defects and did not provide manufacturer with actual knowledge that it was marketing an inherently dangerous automobile, and thus did not support conclusion that manufacturer acted with wanton disregard of life equivalent to manslaughter so as to support an award of punitive damages); *American Cyanamid Co. v. Roy*, 498 So. 2d 859,

861 (Fla. 1986) (punitive damages not warranted where conduct of toxic chemical manufacturer in failing to warn of effects of product did not reach willful and wanton level in absence of evidence indicating an entire lack of care); *Como Oil Co., Inc. v. O'Loughlin*, 466 So. 2d 1061 (Fla. 1985) (evidence that gas truck which was filling an underground storage tank was dirty, grimy, leaked and lacked a safety device on the filler nozzle, and that the driver of said truck did not use a dipstick to measure the gas level of the tank before pumping gas and letting 350 gallons of gas overflow, thereby causing the gas to ignite and the plaintiff working nearby to be burned and thrown by the explosion, did not support an award of punitive damages).

3. *Florida's Statutory Standard.* The Florida Legislature codified the foregoing standards for the imposition of punitive damages via its enactment of the 1999 Tort Reform Act, which added three subsections to Section 768.72 of the Florida Statutes. *See* §768.72(2)-(4), Fla. Stat. (2005). In particular, subsection (2) states as follows:

(2) A defendant may be held liable for punitive damages only if the trier of fact, based on clear and convincing evidence, finds that the defendant was personally guilty of intentional misconduct or gross negligence. As used in this section, the term:

(a) "Intentional misconduct" means that the defendant had actual knowledge of the wrongfulness of the conduct and the high probability that injury or damage to the claimant would result and, despite that knowledge, intentionally pursued that course of conduct, resulting in injury or damage.

(b) "Gross negligence" means that the defendant's conduct was so reckless or wanting in care that it constituted a conscious disregard or indifference to the life, safety, or rights of persons exposed to such conduct.

Proof of an intentional tort does "not necessarily [support] an award of punitive damages. [Citation omitted] Proof of the elements of Tortious interference may be established even though the evidence does not justify an award of punitive damages." *Air Ambulance Professionals, Inc. v. Thin Air*, 809 So. 2d 28, 30 (Fla. 4<sup>th</sup> DCA 2002)(although the jury found that one business partner breached his fiduciary duty to the other, the evidence did not "show the type of gross and flagrant behavior on his part that is required for a punitive damage award."); *Genesis Publ'ns v. Goss*, 437 So. 2d 169, 170-71 (Fla. 3d DCA 1983)(the court held that the publishing of a photograph of plaintiff without her permission in violation of statute did not support imposition of punitive damages, and that the "terms 'recklessness, wantonness and willfulness,' when used to justify punitive damages implies a knowledge and present consciousness not simply that a statute or right will be violated but that injury will result."); *Wrains v. Rose*, 175 So.2d 75, 78 (Fla. 2d DCA 1965)("Mere proof of an intentional tort does not ipso facto entitle the plaintiff to punitive damages.").

Significantly, as discussed below, Edwards' motion does not address, let alone apply, any of the foregoing legal standards.

#### **A. Edwards Motion is Premature**

Edwards' abuse-of-process counterclaim is based entirely on Epstein's allegedly improper filing of various claims against him, including abuse of process. Edwards' renewed motion to plead punitive damages in his Counterclaim is premature because it is not directed to a pending complaint. Until Epstein files a new complaint, there is simply no predicate for seeking punitive damages based upon Epstein's abuse of process claim.

#### **B. Edwards' Proffer Lacks the Requisite "Reasonable Basis" for Punitive Damages**

**1. Epstein's Conduct in Dropping Claims and  
Filing an Amended Complaint Does Not, as a  
Matter of Law, Support Punitive Damages**

Edwards argues (motion at 2-3, 6, 9-10) that he should be permitted to plead punitive damages because Epstein's original, and now superseded, Complaint, contained claims against him (RICO, negligence, criminal practices, fraud and others) that could not be proven and were later dropped, thus "confirm[ing] that no reasonable basis ever existed to support any belief in the truth of those allegations." (*Id.* at 2).<sup>1</sup> Edwards cites no law in support of this specious argument. The mere fact that certain claims were dropped after the original complaint was filed does not "confirm" that they had no reasonable basis and, even if it did, the filing of claims without a reasonable basis does not, as a matter of law, support the imposition of punitive damages, *see* 768.72, Fla. Stat., particularly when Edwards stonewalled in producing documents.

Carried to its logical conclusion, Edwards' argument would mean that punitive damages could be awarded to a defendant any time a plaintiff dropped a claim against that defendant, which contention finds no support in the law and is directly contrary to punitive damages jurisprudence in Florida. *Cf. Auto-Owners Ins. Co. v. Hooks*, 463 So. 2d 468, 474 (Fla. 1<sup>st</sup> DCA 1985)(wrongful issuance of wrongful writ of replevin did not support an award of punitive damages: "This theory would open the door to an award of punitive damages in every instance in which a party is ultimately unsuccessful in his resort to the court in pursuit of a legal remedy.").

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<sup>1</sup> Edwards also argues that Epstein's original Complaint contained a negligence claim that failed to allege that Edwards owed Epstein a duty that was breached. (Motion at 9-10). The original Complaint did not contain a negligence count.

Thus, the fact that Epstein did not reallege certain claims that appeared in his original Complaint does not rise to the exceedingly high level of culpable conduct necessary for the imposition of punitive damages.

**2. Epstein's Purported Inability to Prove His Abuse of Process Claim Against Edwards Does Not, as a Matter of Law, Support Punitive Damages**

Edwards' principal argument (motion at 4-23) is that he is entitled to plead punitive damages against Epstein simply because Epstein will not be able to prove *his* abuse of process claim against him. This argument finds no support in Florida law.

Tacitly conceding that he cannot proffer any evidence that Epstein's filing of an abuse of process claim is in willful and reckless disregard of his rights, Edwards nevertheless devotes nineteen (19) pages of his motion to a catalog of arguments and evidence purportedly disproving Edwards' abuse of process claim against him. They range from litigation privilege (motion at 4-5, 14-15), to denial of involvement in the subject Ponzi scheme (*id.* at 6-7, 11-12), to denial of liability and causation (*id.* at 8), to justification for the discovery regarding Epstein's friends (*id.* at 16-19), to Epstein's invocation of his Fifth Amendment privilege. (*Id.* at 20-23). However, none of this even remotely supports the imposition of punitive damages against Epstein because the purported failure to be able to prove an abuse of process claim – for whatever reason – does not reflect the reprehensible, intentional conduct necessary to impose punitive damages. A motion for leave to amend to add punitive damages is not a substitute for a §57.105 motion. Regardless of the quantum or nature of proof or proffer that Edwards has marshaled to refute Epstein's abuse of process claims, it does not demonstrate that Epstein's conduct in filing his abuse of process claim was done with wantonness or reckless indifference to Edwards' rights.

Edwards' motion for leave to plead punitive damages should be denied for the additional reason that Edwards' abuse of process counterclaim fails to state a valid claim for relief and absent a valid claim, there is no basis for awarding compensatory damages, let alone punitive damages. Under Florida law the tort of abuse of process requires proof that the judicial system was misused for an ulterior purpose *after* an action was filed and process served. *See, e.g., Della-Donna v. Nova University, Inc.*, 512 So. 2d 1051, 1055 (Fla. 4th DCA 1987); *McMurray v. U-Haul Co, Inc.*, 425 So. 2d 1208, 1209-10 (Fla. 4th DCA 1983). Accordingly, the *filing* of an action *itself* does *not* constitute abuse of process. *Della-Donna*, 512 So. 2d at 1056. Because Edwards' counterclaim alleges only that Epstein abused process by filing an unfounded complaint against him, it fails to state a valid claim for abuse of process, and defeats Edwards' adjunct claim for punitive damages.

WHEREFORE, Plaintiff JEFFREY EPSTEIN respectfully submits that Defendant/Counter-Plaintiff BRADLEY EDWARDS' Motion For Leave to Amend to Assert Claim for Punitive Damages be denied.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was sent via e-mail  
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