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

JEFFREY EPSTEIN, No. 50 2009 CA 040800XXXXMBAG

Plaintiff/Counter-Defendant, JUDGE HAFELE

v.

BRADLEY J. EDWARDS, et al.,

Defendant/Counter-Plaintiffs.
_____/

PLAINTIFF/COUNTER-DEFENDANT JEFFREY EPSTEIN'S MOTION FOR SUMMARY JUDGMENT ON DEFENDANT/COUNTER-PLAINTIFF BRADLEY EDWARDS'S FOURTH AMENDED COUNTERCLAIM, REQUEST FOR ORAL ARGUMENT AND SUPPORTING MEMORANDUM OF LAW

Plaintiff/Counter-Defendant, Jeffrey Epstein ("Epstein"), by and through his undersigned counsel and pursuant to Rule 1.510 of the *Florida Rules of Civil Procedure*, hereby files this Motion for Summary Judgment on the sole remaining count of Defendant/Counter-Plaintiff Bradley Edwards's ("Edwards") Fourth Amended Counterclaim, Malicious Prosecution.

In order to prevail on this count, Edwards must prove that there was an absence of probable cause at the time that Epstein filed suit against Edwards. The threshold of facts sufficient to establish probable cause that will defeat Edwards' claim for malicious prosecution is "extremely low and easily satisfied." *Gill v. Kostroff*, 82 F.Supp. 2d 1354, 1364. The specific facts cited herein, independently verifiable from news reports and publicly available criminal and civil case filings, are indisputable. They far exceed that minimal threshold, and establish as a matter of law that probable cause for Epstein's suit against Edwards existed at the time Epstein filed suit. Edwards' assertions of Epstein's guilt and Edwards' innocence have absolutely no

bearing whatsoever on the material facts giving rise to probable cause. Consequently, Summary Judgment must be granted in Epstein's favor and against Edwards.

This Court deferred oral argument on the issue of probable cause, focusing on the applicability of the litigation privilege to Edwards' claim for malicious prosecution. In order to avoid the needless waste of time and judicial resources on a pointless and lengthy trial in this matter, oral argument is respectfully requested on any assertions that Edwards might make with respect to the critical issue of probable cause.

STATEMENT OF UNDISPUTED FACTS[1]

In November 2009, the New York Times, the Wall Street Journal, the Florida Sun-Sentinal and other media outlets reported that Scott Rothstein, the partner of plaintiff Brad Edwards, had fled to Morocco to evade criminal prosecution for using their law firm, Rothstein, Rosenfeldt, Adler ("RRA"), to perpetrate a massive Ponzi scheme. It was widely reported that RRA, Rothstein, Rothstein's partners and other co-conspirators whose identities had not yet been determined defrauded investors into purchasing fake settlements of fabricated cases purportedly being litigated at RRA. [PROVIDE CITATION FROM NYT ARTICLE, WSJ ARTICLE, SUN-SENTICAL ARTICLE AND EPSTEIN AFFIDAVIT [2]]; *Amended Complaint in Razorback*

[1] The following facts are well documented by media reports, criminal case files from the United States District Court for the Southern District of Florida, civil case filings from the Florida circuit courts and the pleadings and discovery in the instant case.

[2] Although Epstein's subjective beliefs regarding probable cause are not relevant to this Court's determination of whether probable cause existed to file suit against Edwards, [cite pages in the motion below], Epstein's Affidavit attached as Exhibit __ hereto ("Epstein's Affidavit") clearly establishes that at the time Epstein commenced suit against Edwards, Epstein was aware of the multitude of media reports, federal criminal filings against Rothstein in the Southern

Funding, LLC, et al. v. Scott W. Rothstein, et al., Case No. 09-062943(19); *see Deposition Transcript of Bradley Edwards dated March 23, 2010; Deposition Transcripts of Scott W. Rothstein in In re: Rothstein Rosenfeldt Adler, PA*; 09-34791-RBR and *Razorback Funding, LLC, et al. v. Scott W. Rothstein, et al.*, Case No. 09-062943(19); *Deposition Transcript of Jeffrey Epstein*. 502008CA028058XXXXMB AB*; and Jane Doe v. Jeffrey Epstein,* 08-80893-CIV Marra/Johnson. Rothstein returned to South Florida in November 2009 to face federal criminal charges and civil claims by private investors arising out of what was reported to be a $1.2 Billion Ponzi scheme, the largest in Florida history (the "Ponzi Scheme"). *See [Epstein Affidavit – Provide Cite]; Information Charging Scott W. Rothstein in United States of America v. Scott W. Rothstein,* 09-60331-CR-COHN; *Epstein's Answer and Affirmative Defenses to Edwards's Fourth Amended Counterclaim; Deposition Transcripts of Scott W. Rothstein in In re: Rothstein Rosenfeldt Adler, PA*; 09-34791-RBR and *Razorback Funding, LLC, et al. v. Scott W. Rothstein, et al.*, Case No. 09-062943(19).

On December 1, 2009, the Federal Government filed a 36 page Information against Rothstein charging that RRA was a racketeering "Enterprise" and that Rothstein, his partners at RRA, as well as other unidentified co-conspirators used RRA to defraud investors out of $1.2 Billion by inducing them to invest in bogus settlements of fictitious RRA cases (the "Rothstein Information").[3] *See [Epstein Affidavit – Provide Cite]; Information Charging Scott W. Rothstein*

District of Florida and civil case filings against Rothstein and RRA detailing rampant fraud at RRA, and specifically claiming that the same process Epstein alleged that Edwards abused in the Epstein Cases was fraudulently used to perpetrate the Ponzi Scheme. [cite affidavit; attach as exhibit]

[3] It was alleged in the Rothstein Information that Rothstein, his partners at RRA and his yet unidentified co-conspirators engaged in a racketeering conspiracy, money laundering

in United States of America v. Scott W. Rothstein, 09-60331-CR-COHN

News outlets also reported at that time that Rothstein had been disbarred and the Florida Bar had begun actively investigating dozens of attorneys employed by RRA in connection with the Ponzi Scheme. [Cite Epstein Affidavit]; Miami Herald, *Scott Rothstein Scandal: Scott Rothstein Partners Probed* (January 14, 2010)("The **Florida Bar** is investigating at least 35 former senior lawyers in the now-bankrupt Fort Lauderdale law firm headed by Scott **Rothstein**, who was disbarred before he was criminally charged last month with using the firm to run a $1.2 billion investment racket.").

On November 20, 2009, the law firm of Conrad Scherer filed a complaint, *Razorback Funding, LLC, et al. v. Scott W. Rothstein, et al.*, Case No. 09-062943(19) (hereinafter referenced as the "Razorback Complaint"), against Scott Rothstein and others alleging a fraudulent scheme perpetrated at RRA involving, among other deceptive practices, fraudulent

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conspiracy, mail and wire fraud conspiracy, and wire fraud, and more specifically that (a) potential investors were fraudulently advised by Rothstein and other co-conspirators that confidential settlement agreements were available for purchase (in what were wholly-fabricated cases); (b) these fictitious settlements were allegedly available in amounts ranging from hundreds of thousands of dollars to millions of dollars and could purportedly be purchased at a discount and repaid to the investors at face value over time; (c) Rothstein and other co-conspirators utilized the offices of RRA to convince potential investors of the legitimacy of these fabricated settlements and the success of the law firm, which enhanced the apparent credibility of the purported investment opportunities in the Ponzi Scheme; (d) Rothstein and other co-conspirators utilized funds obtained through the fraudulent Ponzi Scheme to supplement and support the operation and activities of RRA, to expand RRA by hiring additional attorneys and support staff, to fund salaries and bonuses, and to acquire larger and more elaborate office space and equipment in order to enrich the personal wealth of persons employed by and associated with the RRA criminal Enterprise. *See Information Charging Scott W. Rothstein in United States of America v. Scott W. Rothstein,* 09-60331-CR-COHN. Scott Rothstein, Edwards's partner at RRA, admitted to and was convicted for the fraudulent scheme perpetrated at RRA. He is serving a fifty (50) year sentence. *See Information Charging Scott W. Rothstein in United States of America v. Scott W. Rothstein,* 09-60331-CR-COHN; *Plea Agreement between United States of America and Scott W. Rothstein,* 09-60331-CR-COHN.

discovery and pleadings in active RRA cases Edwards was litigating against Epstein (the "Epstein Cases").[4] It was specifically alleged in the Razorback Complaint that such fraudulent discovery and pleadings in the Epstein Cases were being used at RRA to overinflate the monetary value of the Epstein Cases and legitimize false claims to potential investors that Epstein was willing to pay hundreds of millions of dollars in settlements (to additional fictional plaintiffs in fabricated RRA cases) to avoid devastating publicity about Epstein and the world famous celebrities, politicians and other dignitaries associated with him.[5] [Cite Epstein

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[4] While the Ponzi Scheme was ongoing, RRA was prosecuting three civil cases against Epstein (the "Epstein Cases"). *See pleadings in LM v. Jeffrey Epstein,* 502008CA028051XXXXMB AB*; EW v. Jeffrey Epstein,* 502008CA028058XXXXMB AB*; and Jane Doe v. Jeffrey Epstein,* 08-80893-CIV Marra/Johnson; *Deposition Transcript of Jeffrey Epstein*, p. 23; line 4-p. 38; line 22.

[5] Among the allegations in the Razorback Complaint regarding the fraudulent conduct in the Epstein Cases in connection with the Ponzi Scheme are that

> purported settlements, albeit fraudulent, were based on actual cases being handled by RRA. For example, one of the settlements involved herein was based upon facts surrounding Jeffrey Epstein, the infamous billionaire financier. . . Representatives of D3 were offered 'the opportunity' to invest in a pre-suit $30,000,000.00 court settlement against Epstein involving a different underage female plaintiff.

The female described in the Razorback Complaint was not an actual client of RRA and there was, in fact, no such "pre-suit $30,000,000 court settlement." It was further alleged in the Razorback Complaint that

> To augment his concocted story, Rothstein invited D3 to his office to view the thirteen banker's boxes of actual case files in Jane Doe in order to demonstrate that the claims against Epstein were legitimate and that the evidence against Epstein was real."

The Razorback Complaint goes on to allege that Rothstein falsely told investors that his team of investigators uncovered high profile "celebrities, dignitaries and international figures" onboard Epstein's private jet where alleged sexual assaults took place, and to corroborate the claims that such high-profile persons were implicated in the Epstein scandal, Rothstein "showed D3 copies of a flight log purportedly containing names of celebrities, dignitaries and international figures." Additionally, it was alleged in the Razorback Complaint that Rothstein exploited RRA's representation in the Epstein Cases to fraudulently pursue "issues and evidence unrelated to the underlying litigation but which was potentially beneficial to lure investors into the Ponzi

Affidavit]. According to the defrauded investors in the Razorback Complaint, the fraudulent pleadings and discovery on behalf of Edwards' three clients in the Epstein Cases were deliberately crafted to present a salacious, sexually charged tale of explosive facts to justify the fraudulent pitch to investors that "Epstein had allegedly offered $200,000,000.00 for settlement of the claims held by various young women who were his victims." [Cite Razorback Complaint]

The fraudulent discovery alleged in the Razorback Complaint to have been conducted in the Epstein Cases to further the Ponzi Scheme at RRA did indeed take place in the Epstein Cases. Moreover, it was conducted by and under the direct supervision of Edwards, Rothstein's partner at RRA, who was the lead attorney in charge of the Epstein cases. [6] Edwards, himself, did in fact pursue discovery in the Epstein Cases to identify the celebrities, politicians and dignitaries associated with Epstein who flew on Epstein's private plane, and Edwards, himself, did in fact notice the depositions of famous dignitaries and celebrities such as Bill Clinton and David Copperfield, even though the claims of Edwards' clients in the Epstein Cases allegedly involved exclusively local conduct in Epstein's home in Palm Beach County, had no connection whatsoever to any conduct on Epstein's plane and made absolutely no allegations implicating

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scheme," including discovery to obtain information and documentation of famous individuals who flew on Epstein's plane and noticing the depositions of celebrities that had no involvement whatsoever in the specific claims of Edwards' clients. In fact, none of the alleged conduct for which Edwards' three clients in the Epstein Cases sought recovery took place on or otherwise involved Epstein's aircraft or a single celebrity, politician or dignitary associated with Epstein. (Ex. *** 2 at 2-3; R. 810-11). The victims of RRA's fraudulent scheme described in the Razorback Complaint received $170,000,000 to settle their claims. [Cite]

[6] Edwards was a partner at Rothstein Rosenfeld Adler ("RRA") from April 2009 through November 2009, which was during the same period when, according to the Razorback Complaint, the fraudulent pleadings and discovery were used to perpetuate the Ponzi Scheme. *See Deposition Transcript of Bradley Edwards dated March 23, 2010; Deposition Transcripts of Scott W. Rothstein in In re: Rothstein Rosenfeldt Adler, PA; 09-34791-RBR and Razorback Funding, LLC, et al. v. Scott W. Rothstein, et al., Case No. 09-062943(19).*

any celebrities, politicians or dignitaries. *See letter dated July 22, 2009 from Edwards, attached as Exhibit 3 to his deposition of March 23, 2010; dockets and pleadings in LM v. Jeffrey Epstein, 502008CA028051XXXXMB AB; EW v. Jeffrey Epstein, 502008CA028058XXXXMB AB; LM v. Jeffrey Epstein, 09-81092 Marra/Johnson and Jane Doe v. Jeffrey Epstein, 08-80893-CIV Marra/Johnson; copies of subpoenas; Deposition Transcript of Jeffrey Epstein, p. 23; line 4-p. 38; line 22; Initial Complaint filed by Epstein dated December 9, 2009, pages 13-20; Razorback Amended Complaint; pp. 16-17; ¶¶ 48, 49.*

In addition, on July 24, 2009, while he was a partner at RRA, without any purported justification Edwards filed a duplicative 234-page, 156-count federal complaint against Epstein on behalf of a plaintiff in the Epstein Cases, LM, arising out of the very same facts alleged in the state court complaint that Edwards already had been prosecuting against Epstein on behalf of that same plaintiff for the better part of a year.[7] *See LM v. Jeffrey Epstein,* 09-81092 Marra/Johnson;

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[7] The highly charged vitriolic allegations against Epstein in the federal complaint signed by Edwards on behalf of LM (as well as those in the Epstein Case in which LM is a plaintiff) are contradicted in their entirety by sworn statements made two years earlier in April 2007 by LM about Epstein to the federal government after securing immunity from criminal prosecution. According to a pleading recently filed by the federal government in a case which Edwards is litigating against the government in the United States District Court for the Southern District of Florida under the Crime Victims Rights Act:

> When asked whether Epstein "pulled you closer to him in a sexual way," [LM] replied:
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> A. I wish. No, no, never, ever, ever, no, never. Jeffrey is an awesome man, no.
>
> At the end of her interview, [LM] was asked if she had any questions for the agents or AUSA Villafana. [LM] responded:
>
> A. No, but I hope – I hope Jeffrey, nothing happens to Jeffrey because he's an awesome man and it would really be a shame. It's a shame that he has to go through this because he's an awesome guy and he didn't do nothing wrong,

Deposition Transcript of Jeffrey Epstein, p. 23; line 4-p. 38; line 22. The federal complaint, signed by Edwards, himself, was filed in federal court, but was never served on Epstein and never prosecuted, leading to the unavoidable conclusion that it was deliberately crafted and fraudulently filed to enhance the case files shown at the offices of RRA to lure investors in the Ponzi Scheme. The need to enhance the case files in the Epstein Cases was urgent at that time because, according to the reports in the media and the allegations in the Razorback Complaint, the Ponzi Scheme was beginning to unravel and new investor money was needed to keep it afloat. [8]

In another of the Epstein Cases alleged in the Razorback Complaint to have been fraudulently touted to investors in the Ponzi Scheme, while Edwards was a partner at RRA, Edwards filed a legally unsupportable motion in which Edwards requested that the court order

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nothing.

> By her conduct, [LM] plainly demonstrated that she did not view herself as a victim and did not seek to be treated as such, and she made clear her desire for the investigation to be resolved without charges being filed against Epstein.

[Cite Government Opposition (citations omitted)] Thus, it was not until after LM was represented by Edwards that her sworn statements about Epstein given only after she obtained immunity from criminal prosecution mysteriously changed from glowing praises to the damning accusations contained in Edwards' pleadings.

[8] Although the federal complaint on behalf of LM, filed on July 23, 2009, was never served on Epstein and never prosecuted, two months letter, on September 18, 2009, while the need for new investor money in the Ponzi Scheme was becoming dire, Edwards instructed his assistant at RRA to review and prepare for filing a "complaint in Federal Court similar to the one we did for LM." *See email dated September 18, 2009 from Brad Edwards to Beth Williamson.* This complaint was to be filed on behalf of EW, another of Edwards' clients in the Epstein Cases for whom he also had been litigating a state court case for almost a year arising out of the same facts. The preparation of a complaint similar to one filed two months earlier that had neither been served on Epstein nor prosecuted against him only served to strengthen the conclusion that Edwards had ulterior motives for both those federal complaints.

Epstein to post a fifteen million dollar bond. *See Jane Doe v. Jeffrey Epstein,* 08-80893-CIV Marra/Johnson; *See Razorback Funding, LLC, et al. v. Scott W. Rothstein, et al.*, Case No. 09-062943(19). In connection with this motion, Edwards discussed, at length, Epstein's net worth and filed supplemental papers listing in great detail Epstein's vehicles, planes and other items of substantial value, all at the time when the Epstein Cases were the centerpiece of the fraudulent plan to raise new investor money desperately needed to keep the Ponzi Scheme from unraveling. [Cite Razorback and media reports]; *Depositions taken of Scott W. Rothstein in In re: Rothstein Rosenfeldt Adler, PA*; 09-34791-RBR. The court confirmed that there was no legitimate basis for filing Edwards' motion, calling it "devoid of evidence." *See Order in Jane Doe No. 2 v. Epstein Dated November 5, 2009,* 08-cv-80119.

The Razorback Complaint's allegations of fraud in the Epstein Cases, based on discovery which was entirely unrelated to the specific claims for which Edwards' clients sought recovery in the Epstein Cases, viewed together with duplicative federal pleadings against Epstein filed by Edwards without any purported justification and Edwards' motion practice which the federal court itself ruled was legally unsupportable, created ample reason to believe that Edwards had fraudulently abused process in the Epstein Cases. It provided ample reason to conclude that Edwards did so to assist with the widely reported Ponzi Scheme at RRA for which Edwards' partner at RRA, Scott Rothstein, had been indicted and other unidentified partners at RRA were under investigation by the federal government as well as the Florida Bar. That the alleged fraudulent activity in the Epstein Cases only occurred after Edwards joined RRA, the firm that

was operating the Ponzi Scheme, made that conclusion inevitable.[9] Epstein incurred significant fees, costs and expenses in defending against the allegedly fraudulent discovery, pleadings and motion practice in the Epstein Cases prosecuted by Edwards while he was a partner at RRA.

Based on the foregoing facts and developments, on December ___, 2009, Epstein filed suit against Rothstein, as the front man of the Ponzi Scheme, and against Edwards, one of Rothstein's partners at RRA, and the lead attorney responsible for what investors in the Razorback Complaint confirmed was fraudulent activity in the Epstein Cases used to perpetuate the Ponzi Scheme. Epstein revised his claims against Edwards, and by order dated October 4, 2011, the factual allegations contained in Epstein's second amended complaint were held by Judge Crow as sufficient to withstand Edwards's motion to dismiss for failure to state a cause of action.[10] [Cite Judge Crow's Order on Motion to Dismiss] The undisputed facts set forth herein were the same facts alleged in Epstein's second amended complaint, were determined by the Court to have stated a cause of action for abuse of process, and survived Edwards' motion to

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[9] Edwards admitted in his March 23, 2010 deposition that there were between $300,000 and $500,000 in litigation and investigation related expenditures on the Epstein Cases during the short period of time during which he was a partner at RRA, as compared to the expenditures on the Epstein Cases during the preceding eight months, when the cases were not being prosecuted at RRA, which Edwards admitted may not have even exceeded $25,000. (App.* at 6; [USE * R. 813-14)]. The drastic increase in spending on allegedly fraudulent discovery, pleadings and motion practice by Edwards only after Edwards joined RRA, a criminal enterprise which was then seeking to raise tens of millions of dollars to avoid discovery of a $1.2 Billion Ponzi Scheme, provides compelling reason to conclude that Edwards abused process in the Epstein Cases to support the Ponzi Scheme at his new firm.

[10] In the October 4, 2011 order, the Court ruled: "A Motion to Dismiss for failure to state a cause of action admits the well pled facts in the Complaint and reasonable inferences therefrom and the allegations must be construed in the light most favorable to the plaintiff. Applying this standard to the four corners of the Complaint filed by the Plaintiff, the Court finds that the allegations are sufficient to plead a cause of action for "abuse of process" against Defendant EDWARDS."

dismiss. [11]

PROCEDURAL HISTORY

In its May 19, 2014 order granting Epstein's motion for summary judgment, this Court recounted the following procedural history with respect to Epstein's suit:

> [Epstein] filed suit against [Edwards]. Edwards then filed a counter-claim against Epstein. Epstein subsequently dismissed his Complaint without prejudice. The counter-claim proceeded, undergoing several amendments. As it now stands, the Fourth Amended Counterclaim has two causes of action: abuse of process and malicious prosecution. Epstein moved for summary judgment arguing that the litigation privilege applies to both the abuse of process and malicious prosecution claims.

(App. 1). In addition to arguing the application of the litigation privilege, in Epstein's motion for summary judgment he asserted that the suit he filed against Edwards, which is the basis of Edwards' malicious prosecution action, was supported by probable cause.

At the outset of the hearing held January 27, 2014 on Epstein's motion for summary judgment, the Court orally denied summary judgment as to probable cause, and directed the parties to address the litigation privilege issue.[12] The Court entered its written order granting

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[11] The Court is familiar with the allegations in Epstein's original and amended complaints. The second amended complaint named Edwards in a cause of action for abuse of process, arising out of a fraudulent Ponzi scheme perpetrated by attorneys and staff of RRA, where Edwards was the partner who prosecuted the Epstein Cases against Epstein, which were marketed to investors with the promise of multi-million dollar recoveries. Epstein's allegations included harassing investigations, vexatious and irrelevant discovery, legally unsupportable motion practice, and the filing of duplicative, fraudulent federal pleadings that were never served on or prosecuted against Epstein.

[12] The entirety of the Court's oral ruling on probable cause was the following: "But I just feel like the probable cause aspect just carries with it too many factual issues for me to rule as a matter of law, so I don't think that I can grant relief on the probable cause issue vel non. So if you will, please move on...." (App. * at 19-20). Thereafter, the Court heard argument solely as to the litigation privilege.

summary judgment in favor of Epstein upon application of the litigation privilege based upon the then binding precedent of *Wolfe v. Foreman,* 128 So. 3d 67 (Fla. 3d DCA 2013). Final judgment was thereafter entered in favor of Epstein.

Edwards appealed the judgment as it pertained to his malicious prosecution action, during which time the Fourth District issued *Fischer v. Debrincat*, 169 So. 3d 1204 (Fla. 4th DCA 2015), holding that the litigation privilege did not apply to a malicious prosecution action and certifying to the Supreme Court of Florida conflict with *Wolfe*. In Edwards' appeal, the Fourth District reversed based upon *Fischer*, and again certified conflict. *Edwards v. Epstein*, 178 So. 3d 942 (Fla. 4th DCA 2015). Epstein filed for review in the Supreme Court. The Supreme Court resolved the conflict in *Debrincat v. Fischer*, No. SC15-1477, 2017 WL 526508 (Fla. Feb. 9, 2017), holding that the litigation privilege does not bar a malicious prosecution action. Based upon *Debrincat*, the Supreme Court declined to review the decision of the Fourth District in this case. [Cite June 9, 2017 Florida Supreme Court order]

Epstein renews his motion for summary judgment on the ground that the material undisputed facts in this case and applicable law demonstrate that the issue of probable cause does indeed present a question of law for determination by the Court that must be resolved in Epstein's favor.

SUMMARY JUDGMENT MUST BE GRANTED WHERE IT CANNOT BE SHOWN THAT THERE WAS AN ABSENCE OF PROBABLE CAUSE WHEN EPSTEIN FILED SUIT AGAINST EDWARDS

Summary judgment is proper if there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. *Volusia County v. Aberdeen at Ormond*

Beach, 760 So. 2d 126, 130 (Fla. 2000); *Smith v. Shelton*, 970 So. 2d 450, 451 (Fla. 4th DCA 2007). It is mandated when the pleadings, depositions, answers to interrogatories, admissions, affidavits, and other materials in evidence on file show that there are no genuine issues as to any material fact and that the moving party is entitled to judgment as a matter of law. FLA. R.CIV. P. 1.510(c).

When an appellate court enters a reversal of summary judgment and remands the case for further proceedings, it is proper for trial court to again consider a motion for summary judgment if such should be presented. *Pan-American Life Ins. Co. v. Tunon*, 179 So. 2d 382 (Fla. 3d DCA 1965). *See also B & B Const. Co. of Ohio, Inc. v. Rinker Materials Corp.,* 294 So. 2d 131 (Fla. 4th DCA 1974) (filing of further motions for summary judgment are permissible if it could be clearly demonstrated there was no genuine issues of fact remaining.). It is also preferred if, as is true in this case, consideration of a renewed motion for summary judgment would be in the best interests of the parties and the public, inasmuch as it would avoid needless expense and conserve precious judicial resources. *Walker v. Atlantic Coast Line Railroad Co*., 121 So. 2d 713 (Fla. 1st DCA 1960). As explained below, the undisputed and incontrovertible material facts in this case establish that Edwards simply cannot prove that there was an absence of probable cause for Epstein to file suit against Edwards, which is an essential element of Edwards' cause of action for Malicious Prosecution against Epstein, and Summary Judgment against Edwards is therefore mandated.

In Florida, "an action for malicious prosecution is a serious matter." *Cent. Fla. Mach. Co., Inc. v. Williams*, 424 So. 2d 201, 203 (Fla. 2d DCA 1983). Malicious prosecution actions are "not generally favored" in Florida. *Id*. at 202.

There are six elements that must be established in order to prove malicious prosecution:

1) the commencement of a judicial proceeding; 2) its legal causation by the present defendant against the plaintiff; 3) its bona fide termination in favor of the plaintiff; 4) the absence of probable cause for the prosecution; 5) malice; 6) damages. *Duval Jewelry Co. v. Smith*, 102 Fla. 717, 136 So. 878, 880 (1931). The fourth element, the absence of probable cause, is at issue here.

In *Goldstein v. Sabella*, 88 So. 2d 910 (Fla. 1956), the Supreme Court of Florida explained the meaning of probable cause in the context of a malicious prosecution action as follows:

> Probable cause is defined as "A reasonable ground of suspicion, supported by circumstances sufficiently strong in themselves to warrant a cautious man in the belief that the person accused is guilty of the offense with which he is charged." *Dunnavant v. State*, Fla., 46 So. 2d 871, 874 [(Fla. 1950)]. This, as well as other acceptable definitions of the term, indicates that one need not be certain of the outcome of a criminal or civil proceeding to have probable cause for instituting such an action.

Id. at 910.

"Probable cause in the context of a civil suit is measured by a lesser standard than in a criminal suit." *Wright v. Yurko*, 446 So. 2d 1162, 1166 (Fla.5th DCA 1984). "The standard for establishing probable cause in a civil action is extremely low and easily satisfied." *Gill v. Kostroff*, 82 F.Supp. 2d 1354, 1364. Even in the criminal context, such as when analyzing probable cause to support a search warrant, probable cause can be inferred from the facts. *See State v. Powers*, 388 So. 2d 1050, 1051 (Fla. 4th DCA 1980).

Under the higher standard for probable cause in the criminal context, it is well settled that probable cause must be judged by the facts that existed at the time of the defendant's arrest, not evidence subsequently learned or provided to the prosecution. *Mailly v. Jenne*, 867 So. 2d 1250, 1251 (Fla. 4th DCA 2004) ("Probable cause is judged by the facts and legal state of affairs that

existed at the time of the arrest."); *Fla. Game & Freshwater Fish Comm'n v. Dockery*, 676 So.2d 471, 474 (Fla. 1st DCA 1996) ("Hindsight should not be used to determine whether a prior arrest or search was made with probable cause. Events that occur subsequent to the arrest cannot remove the probable cause that existed at the time of the arrest.") (citations omitted) (emphasis added); *McCoy v. State*, 565 So. 2d 860, 861 (Fla. 2d DCA 1990) (holding that hindsight should not be used to determine whether a prior arrest or search was made with probable cause); *Dodds v. State*, 434 So. 2d 940, 942 (Fla. 4th DCA 1983) (holding that events that occur subsequent to the arrest cannot remove the probable cause that existed at the time of the arrest).

The same principles of probable cause apply in a malicious prosecution case, *see, e.g., Gill v. Kostroff*, 82 F.Supp. 2d 1354, 1364 (M.D. Fla. 2000)("A determination of whether probable cause exists is based on the facts known by the defendant in the malicious prosecution action at the time the underlying action was initiated, not some later point in time.")(applying Florida law), *see*, *also*, *Fee, Parker & Lloyd, P.A.*, 379 So. 2d at 418 ("[W]e find the facts within Mr. Parker's knowledge at the time suit was filed sufficient to constitute probable cause for the commencement of the malpractice action."), *and* Fla. Std. Jury Instruction 406.4 ("Probable cause means that at the time of [instituting] [or] [continuing] a [criminal] [civil] proceeding against another, the facts and circumstances known to [(defendant)] [(other person)] were sufficiently strong to support a reasonable belief that (claimant) [had committed a criminal offense] [the [claim] [proceeding] was supported by existing facts]."), but with even greater deference to the decision to seek redress through the filing of a civil lawsuit because, as noted, the standard for satisfying probable cause is lower than that applicable to a criminal case. *Wright, supra*.

Once the movant for summary judgment tenders competent evidence to support his motion, the opposing party must come forward with counter-evidence sufficient to reveal a genuine issue of material fact. *Glasspoole v. Konover Constr. Corp. South*, 787 So. 2d 937, 938 (Fla. 4th DCA 2001). A failure of proof of any essential element of a party's cause of action necessarily renders all other facts offered by the non-moving party immaterial. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986).

"Just because conflicting evidence exists does not mean probable cause is a jury question." *C.A. Hansen Corp. v. Wicker, Smith, Blomqvist, Tutan, O'Hara, McCoy, Graham & Lane, P.A.*, 613 So. 2d 1336 (Fla. 3d DCA 1993) (emphasis supplied); *see also Rivernider v. Meyer*, 174 So. 3d 602, 604-05 (Fla. 4th DCA 2015) (trial court properly entered summary judgment against malicious prosecution claimant where underlying proceeding was commenced with probable cause); *Northwest Florida Home Health Agency v. Merrill*, 469 So. 2d 893 (Fla. 1st DCA 1985)(in a malicious prosecution suit for reporting the termination of a nurse to the Board of Nursing, whether the defendant had probable cause to report the nurse was a question of law even though the nurse's testimony denied the truth of the charges leading to the termination); *Dorf v. Usher*, 514 So.2d 68, 68 (Fla. 4th DCA 1987) ("Although some of the facts may be in dispute, the trial court correctly found that there was no dispute with respect to the material facts on those elements. Probable cause then became a question of law for the court.").

"Probable cause only becomes a question for the jury when *material* facts are disputed." *Endacott v. Int'l Hospitality, Inc.*, 910 So. 2d 915, 922 (Fla. 3d DCA 2005). "When the facts relied upon to show probable cause are undisputed, 'the existence or nonexistence of probable cause is a pure question of law to be determined by the court under the facts and circumstances

of each case.'" *Id*. (citations omitted) (citing *City of Pensacola v. Owens*, 369 So.2d 328 (Fla.1979)).

UNDISPUTED GROUNDS FOR SUMMARY JUDGMENT

The reasonable suspicion that gives rise to probable cause for Epstein's suit against Edwards (an extremely low and easily satisfied threshold) is well established by the abundance of media reports, the federal criminal cases files against Scott Rothstein available on public docket in the Southern District of Florida, as well as Florida state civil case files, all detailing a massive fraud at RRA involving a $1.2 Billion Ponzi Scheme facilitated through the use of fraudulent litigation in the Epstein Cases. Undoubtedly, reliance on third party reports and court papers for probable cause is proper. "[A]n identification or a report from a single credible victim or eyewitness can provide the basis for probable cause ...." *City of St. Petersburg v. Austrino*, 898 So.2d 955, 960 (Fla. 2d DCA 2005) (emphasis added).[13] *See, also, e.g., EMI Sun Village, Inc. v. Catledge*, No. 13-cv-21594, 2013 WL 5435780 (S.D. Fla. 2013) (dismissing malicious prosecution action where "ample probable cause to bring the underlying litigation based on the evidence of a fraudulent scheme" was shown by court records). *Id*. at *4.

Based on an abundance of widely distributed media reports[14] and criminal and civil case

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[13] Paragraph 20 of Epstein's original complaint demonstrates his reliance upon such a report from a single credible victim or eyewitness sufficient to demonstrate for probable cause: "Ft. Lauderdale attorney William Scherer represents multiple Rothstein related investors. He indicated in an article that RRA/Rothstein had used "the Epstein ploy ... as a showpiece as bait. That's the way he raised the money. He would use ... cases as bait for luring investors into fictional cases. All the cases he allegedly structured were fictional. I don't believe there was a real on in there."

[14] In fact, one could not read a newspaper or turn on the television without hearing about

filings, it was a matter of public knowledge that RRA was operating a Ponzi Scheme in which real RRA cases were being used to defraud investors into purchasing bogus legal settlements of fictitious cases. The federal government charged that RRA was a criminal enterprise and that RRA's head partner, Scott Rothstein, other partners at RRA and other co-conspirators were engaged in that criminal enterprise. Rothstein was disbarred and the Florida Bar was reportedly investigating dozens of the attorneys at RRA in connection with that criminal enterprise.

Investors defrauded in that criminal enterprise at RRA filed court papers specifically claiming that fraudulent pleadings and discovery in the Epstein Cases prosecuted by RRA attorneys were used to perpetrate the Ponzi Scheme. In fact, the fraudulent pleadings and discovery detailed in those court papers actually occurred in the Epstein Cases, even though they were completely unrelated to the specific misconduct alleged by the plaintiffs in the Epstein Cases. One of Rothstein's partners at RRA, Brad Edwards, was the lead attorney in the Epstein Cases responsible for filing the fraudulent pleadings and conducting the fraudulent discovery detailed in the Razorback Complaint. While at RRA, Edwards also filed without any purported justification a duplicative 234-page, 156-count sexually charged federal complaint against Epstein on behalf of the very same plaintiff for whom Edwards was already prosecuting one of the Epstein Cases at RRA and arising out of the identical allegations made in that Epstein Case. Although Edwards made sure to add that highly sensationalized pleading to the publicly available court file, he neither served nor prosecuted it against Epstein. At the same time, in another Epstein Case, Edwards filed what the court held was a legally unsupportable bond motion against Epstein detailing at length all of Epstein's most expensive assets. None of these

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RRA and the Ponzi Scheme for several months.

fraudulent pleadings, motions or discovery occurred until after Edwards joined as a partner what the federal government identified as a criminal enterprise operating the largest Ponzi Scheme in Florida history. And all of this all took place at a time during which, according to the investors in the Razorback Complaint, the Epstein Cases were the centerpiece of the fraudulent plan to raise new investor money desperately needed to keep that Ponzi Scheme from unraveling. Had Edwards not engaged in the discovery, pleading and motion practice which defrauded investors claimed were fraudulently used to lure them into the Ponzi Scheme, Epstein would not have incurred the fees, costs and expenses paid to defend against it.

Under the circumstances, there was clearly a reasonable ground of suspicion that: (1) there was fraudulent litigation in the Epstein Cases the purpose of which was to further the Ponzi Scheme perpetrated by the criminal enterprise at RRA; and (2) Brad Edwards, as the lead partner at RRA on the Epstein Cases who engaged in that fraudulent litigation, was liable for Epstein's damages resulting from that abuse of process. The facts giving rise to that reasonable ground of suspicion well exceed the "extremely low and easily satisfied" threshold of probable cause for Epstein's suit as a matter of law. That inevitable conclusion is only further strengthened by Judge Crow's ruling that the allegations in Epstein's second amended complaint, based on these same undisputed facts and circumstances, stated a cause of action for abuse of process that survived Edwards's motion to dismiss. Where probable cause existed for Epstein's suit as a matter of law, the claim for malicious prosecution must fail and summary judgment must be granted.

EDWARDS DOES NOT DISPUTE EPSTEIN'S MATERIAL FACTS

Although Edwards has made statements generally denying the existence of probable cause for Epstein's underlying suit against Edwards, nowhere in Edwards's Response in Opposition to Epstein's original motion for summary judgment ("Edwards's Opposition") does Edwards actually dispute any specific material fact cited by Epstein as grounds for probable cause. Instead, Edwards claims that the asserted facts, as strung together by Epstein, constitute "impermissible inferences." [Cite in Edwards Opposition] However, Edwards's claim is nonsensical because the reasonable "suspicion" on which probable cause is based is nothing more than an inference of guilt founded on facts and circumstances. Even under the more demanding standard in a criminal context, such as when analyzing probable cause to support a search warrant, "interpretation of the facts in a "commonsense and realistic fashion," may result **in an inference** of probable cause to believe that criminal objects are located in a particular place to which they have not been tied by direct evidence." State v. Powers, 388 So. 2d 1050, 1051 (Fla. Dist. Ct. App. 1980) (emphasis added) (citations omitted)

Edwards further claims that the facts cited by Epstein are immaterial, and posits a series of conclusory arguments relating to Epstein's alleged guilt of sexual misconduct, Edwards's innocence of wrongdoing and Epstein's state of mind and motivations to support Edwards claim of immateriality. [Cite Edwards's Opposition] Edwards further argues that Epstein had no probable cause because he had no and would be unable to prove any damages. [Cite Edwards's Opposition] Finally Edwards insists that Epstein should be precluded from summary judgment as a result of adverse inferences to which Edwards is entitled based on Epstein's invocation of his Fifth Amendment rights at Epstein's deposition. [Cite Edwards's Opposition] The entirety of

Edward's ineffectual attempts to dispute the existence of probable cause is encapsulated by the following paragraph from Edward's Opposition:

> Epstein knew that he had in fact molested each of the minors represented by Brad Edwards. He also knew that each litigation decision by Brad Edwards was grounded in proper litigation judgment about the need to pursue effective discovery against Epstein, particularly in the face of Epstein's stonewalling tactics. Epstein also knew that he suffered no legally cognizable injury proximately caused by the falsely alleged wrongdoing on the part of Edwards. Moreover, Epstein had no intention of waiving his Fifth Amendment privilege against self-incrimination in order to avoid providing relevant and material discovery that Epstein would need in the course of prosecuting his claims and to which Edwards was entitled in defending those claims. . . Epstein was motivated by a single ulterior motive to attempt to intimidate Edwards and his clients and others into abandoning or settling their legitimate claims for less than their just and reasonable value. . . to require Edwards to expend time, energy and resources on his own defense, to embarrass Edwards and impugn his integrity and deter others with legitimate claims against Epstein from pursuing those claims.

Edwards's Opposition, p. 2. However, as explained below, none of these arguments has any bearing on the issue of whether, based on the facts cited by Epstein, probable cause existed for Epstein's claims at the time he filed suit.

EDWARDS'S ARGUMENTS DO NOT REFUTE PROBABLE CAUSE

In order to succeed in opposing Epstein's renewed motion for summary judgment, Edwards must come forward with counter-evidence sufficient to reveal a genuine issue of material fact that might enable him to affirmatively prove the absence of probable cause at trial. *Glasspoole v. Konover Constr. Corp. South*, 787 So. 2d 937, 938 (Fla. 4th DCA 2001). However, Edwards's legal and factual arguments have absolutely nothing to do with an objective evaluation of the existence of probable cause in this case. They reveal no genuine issue of material fact that could even conceivably enable Edwards to satisfy his burden to prove an absence of probable cause a trial.

Edwards's claims that Epstein was guilty of the sexual misconduct alleged by the plaintiffs in the Epstein Cases and that Edwards legitimately initiated those cases are entirely irrelevant. Separate and apart from the underlying merits or defects in the Epstein cases, Epstein's suit was based upon the fraudulent Ponzi Scheme advanced by RRA, and third party allegations of fraudulent litigation in the Epstein cases in furtherance of the Ponzi Scheme as corroborated by Edwards' actual pleadings, motions and discovery in the Epstein Cases. The media reports, criminal and civil case files and Edwards' pleadings, motions and discovery in the Epstein Cases cited by Epstein are more than sufficient to support an objectively reasonable suspicion against Edwards for abuse of process, regardless of the underlying merits of the Epstein Cases.

As Edwards, himself, acknowledged in Edwards' Opposition:

> An abuse of process claim requires pleading and proof of the following three elements: 1) that the defendant made an illegal, improper or perverted use of process; 2) that the defendant had ulterior motives or purposes in exercising such illegal, improper, or perverted use of process; and 3) that, as a result of such action on the part of the defendant, the plaintiff suffered damage.

Edwards's Opposition, p. 9. A claim for abuse of process will lie so long as there is an illegal, improper or perverted use of process, regardless of the legitimacy of the underlying claim in which process is abused. The propriety of the underlying claim is simply not at issue. [cite case law].

Because the validity of the underlying claim is not at issue in an abuse of process case, process may be abused even where the underlying claim is valid. [cite]. Thus, Epstein's knowledge of his own guilt and the legitimacy of plaintiffs' underlying claims in the Epstein Cases would not free Edwards from suspicion of abusing process based on the facts and

circumstances in existence at the time Epstein filed suit. [15]

Second, Edwards attempt to refute probable cause with his claim that Epstein's suit against Edwards "was motivated by a single ulterior motive to attempt to intimidate Edwards and his clients and others into abandoning or settling their legitimate claims for less than their just and reasonable value", [cite opposition], is also totally irrelevant. Although such conclusory allegations, if able to be proven, may ultimately bear on whether Epstein behaved with malice against Edwards, they have absolutely no relation to an evaluation of whether probable cause existed at the time Epstein filed suit against Edwards. It may be true that malice may be inferred from the absence of probable cause, but the case law is clear that under no circumstances may the absence of probable cause be inferred from malice. [Cite]

Third, Edwards's assertion of his own innocence is equally unavailing. In Edwards's Opposition, Edwards's claims that Epstein could not have had probable cause for abuse of process based on third party claims of Edwards's abusive litigation practices because Edwards's litigation practices had a "sound legal basis". (Edwards' Opp. at 6). Edwards' argument, while a potential defense on the merits to Epstein's suit against Edwards, is not relevant to the determination of whether there was probable cause at the time Epstein filed suit based upon an objectively reasonable suspicion of fraudulent litigation by Edwards to facilitate RRA's Ponzi Scheme. *Gill,* 82 F.Supp. 2d at 1364 ("A determination of whether probable cause exists is based

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[15] Edwards's attempt to fabricate a probable cause dispute based upon Epstein's filing the Second Amended Complaint against Edwards after Epstein settled the Epstein Cases is equally irrelevant. The argument that Epstein's settlement of the Epstein Cases is evidence that the cases were validly initiated says nothing about whether in fact pleadings, motions and discovery were fraudulently conducted for ulterior purposes constituting an abuse of process in otherwise purportedly legitimate lawsuits.

on the facts known by the defendant in the malicious prosecution action at the time the underlying action was initiated, not some later point in time.") (applying Florida law).

Edwards further claims that Epstein could not rely on the third party claims in Razorback Complaint because Epstein knew that Edwards's litigation practices were proper:

> As discussed above, the evidence warrants the finding that Epstein knew that Edwards was legitimately pursing the claims on behalf of his clients which included the effort to secure testimony from Epstein's close confidants. Therefore, Epstein cannot rely upon the referenced public documents to support his claims against Edwards given he knows that information to be untrue . . ."

(Edwards' Opp. at 11-12) (exhibit reference omitted).

Putting aside the unsubstantiated, wholly conclusory nature of Edwards' allegations, the possibility that there was an alternate explanation for Edwards's litigation practices and that Edwards was properly pursuing his clients' interests by conducting some of the process in question does not preclude a determination of probable cause as a matter of law based on the facts cited by Epstein. "[O]ne need not be certain of the outcome of a criminal or civil proceeding to have probable cause for instituting such an action." *Goldstein v. Sabella*, 88 So. 2d 910 (Fla. 1956) at 910. "Just because conflicting evidence exists does not mean probable cause is a jury question." *C.A. Hansen Corp. v. Wicker, Smith, Blomqvist, Tutan, O'Hara, McCoy, Graham & Lane, P.A.*, 613 So. 2d 1336 (Fla. 3d DCA 1993); *see, also, Northwest Florida Home Health Agency v. Merrill*, 469 So. 2d 893 (Fla. 1st DCA 1985)(in a malicious prosecution suit for reporting the termination of a nurse to the Board of Nursing, whether the defendant had probable cause to report the nurse was a question of law even though the nurse's testimony denied the truth of the charges leading to the termination). All that is required are reasonable grounds for suspicion, which were in abundance on the facts cited by Epstein.

For example, at the time Epstein filed suit against Edwards, Edwards neither disputed nor provided any explanation for filing the duplicative federal lawsuit against Epstein on behalf LM, of one of the clients for whom Edwards had already been prosecuting one of the Epstein Cases for almost a year. This 234-page, 156-count federal complaint, signed by Edwards, himself, arising out of the identical facts alleged in one of the Epstein Cases was filed against Epstein (but never served on him and never prosecuted) at the same time during which the Ponzi Scheme was reportedly unraveling. Consistent with the allegations in the Razorback Complaint, a logical conclusion regarding the purpose for filing this superfluous, highly charged, federal complaint at the time the Ponzi Scheme was unraveling and new investor money was urgently needed was that it was filed to increase investor interest in RRA cases against Epstein to bring additional money into the Ponzi Scheme. By itself, the federal complaint provided reasonable grounds of suspicion against Edwards, and when combined with other litigation by Edwards that had no direct relation to the specific claims made by Edwards's clients, or were determined by Judge Crow to have been "devoid of evidence," provided more than ample basis for suspicion that Edwards's conduct was more than merely zealous advocacy.

Moreover, Edwards' speculations about Epstein's subjective beliefs, even if true (which they are not), are irrelevant. So, too, are Edwards's claims about Epstein's ulterior motives in pursuing suit against Edwards. Probable cause to act is not measured by the subjective belief of the actor, even under the more stringent standard of probable cause applicable to criminal cases. "[T]he concept of probable cause is grounded upon a standard of objective reasonableness." *Hawxhurst v. State*, 159 So. 3d 1012, 1013 (Fla. 3d DCA 2015)."The existence of probable cause is measured by an objective standard, not based on an officer's underlying intent or subjective

motivation." *Hernandez v. State*, 784 So.2d at 1128 (quoting *State v. T.P.*, 588 So. 2d 286, 287 (Fla. 3d DCA 1991)).

Accordingly, "[t]he principal components of a determination of reasonable suspicion or probable cause will be the events which occurred leading up to the stop or search, and then the decision whether these historical facts, viewed from the standpoint of an *objectively reasonable* police officer, amount to reasonable suspicion or to probable cause". *Ornelas v. United States*, 517 U.S. 690, 696 (1996). "Therefore, a police officer's subjective belief regarding the existence or non-existence of probable cause for a warrantless arrest is neither dispositive of, nor generally relevant to, this issue." *Hawxhurst*, 159 So. 3d at 1014. *See also State v. Jennings*, 968 So. 2d 694, 696 (Fla. 4th DCA 2007) ("The officers in this case had probable cause to search the occupants of the vehicle once they smelled the marijuana. That they may have articulated a subjective intent to search for officer safety did not change the fact that the smell of marijuana smoke provided an objectively reasonable basis for the search."). Edwards' contention that Epstein's subjective beliefs and motivation are relevant to this Court's evaluation of whether as a matter of law probable cause existed must be rejected.

Edwards also argues that Epstein would not have been able to prove damages in his case against Edwards because (1) Epstein was not an investor in the Ponzi Scheme, (2) Edwards did not speak to any investors in the Ponzi Scheme so he could not have pumped up the Epstein Cases as alleged in Epstein's complaint, and (3) Edwards was otherwise innocent of the allegations made against him in Epstein's complaint. [Pull all Cites from the Opposition](Edwards' Opp. at 5). None of these arguments has any merit.

The fact that Epstein was not an investor in the Ponzi Scheme is simply irrelevant to

Epstein's claims against Edwards. Epstein did not allege that the Ponzi Scheme damaged him; he alleged that irrelevant discovery, legally unsupportable motions and duplicative and unjustified pleadings that were reportedly fraudulently used in the Epstein Cases to further the Ponzi Scheme caused the damage, and that Edwards was responsible for and personally conducted the fraudulent litigation at issue. So long as there was probable cause to assert that the fraudulent litigation was an abuse of process, any fees, costs and expenses paid by Epstein to defend against that litigation would have been recoverable as damages from Edwards as the attorney who conducted and was responsible for the litigation.

Edwards' claim that he never spoke to investors in the Ponzi Scheme is yet another red herring. Epstein did not claim that Edwards spoke to investors in the Ponzi Scheme. He claimed that fraudulent litigation conducted by and under the supervision of Edwards was used to further the Ponzi Scheme and, as such, was an abuse of process. There is no necessity for Edwards to have spoken to investors to have furthered the Ponzi Scheme or abused process in the Epstein Cases. Consequently, this issue has no bearing whatsoever on Epstein's claim for damages.

As noted, whether Epstein would have ultimately prevailed on the merits of his lawsuit is irrelevant to the determination of whether there was probable cause at the time Epstein filed it. *See Goldstein v. Sabella*, 88 So. 2d 910 (Fla. 1956) at 910. All that was required was a reasonable ground of suspicion of abuse of process by Edwards which, if ultimately proven, would have resulted in Epstein recovering damages for the fees, costs and expenses Epstein incurred to defend against such abusive process.

Finally, Edwards attempts to negate the probable cause that existed at the time Epstein filed suit based upon adverse inferences to be drawn from Epstein's subsequent invocations of

his Fifth Amendment privilege. This attempt must also be flatly rejected for several reasons. First, the Fifth Amendment invocations took place after Epstein filed his complaint and are therefore irrelevant to the determination of whether probable cause existed at the time the lawsuit was filed. *Gill*, *supra*.

Second, Epstein's abuse of process claim against Edwards was based on misconduct by RRA, Rothstein, Edwards and others, demonstrable from media reports, criminal and civil case files and other extrinsic evidence, and was not based on anything Epstein said or did. So, Epstein's testimony was not needed to establish such misconduct or to defend against the allegations of misconduct. Third, as noted above, Epstein's subjective beliefs about the legality of Edwards' conduct are simply irrelevant to an objective evaluation of whether probable cause existed at the time Epstein filed his complaint. [Cite Page in Brief]. Thus, detailed testimony from Epstein regarding Edwards' abuse of process alleged in Epstein's complaint would not be required to prove Epstein's case, and would certainly not be required to demonstrate the existence of probable cause in defending against Edwards' malicious prosecution action. Moreover, deposition questions asking Epstein to identify specific conduct by Edwards which Epstein believed was illegal would have required Epstein to render legal opinions which in any event would not be proper subjects for an adverse inference. [Find Cite]

In addition, to the extent that any adverse inference might have been permissible, Epstein's invocation of the Fifth Amendment would have only entitled a jury to make an adverse inference, if the jury desired to do so. [Cite] It would not have required an adverse inference from the jury, particularly if other extrinsic evidence were available to demonstrate Edwards's guilt of the offenses claimed by Epstein and the existence of probable cause to assert those

claims. [Cite] Inasmuch as no inference would be required, even if it were true that Epstein intended to invoke his Fifth Amendment rights when he filed his claims, such invocation would not have precluded Epstein's recovery for Edwards' abuse of process and in no way diminishes the probable cause that existed to file suit against Edwards.

CONCLUSION

The undisputed facts delineated above clearly establish that there was probable cause as a matter of law at the time Epstein filed his complaint. Edwards's purported factual disputes have no bearing on an objective evaluation of whether probable cause existed at the time Epstein filed suit and should not deter this Court from evaluating whether probable cause existed as a matter of law and finding a failure of this essential element of Edwards malicious prosecution claim against Epstein.

WHEREFORE, Epstein respectfully asks this Court to grant his motion for summary judgment, and an opportunity for the parties to be heard at oral argument regarding any assertions by Edwards attempting to refute the existence of probable cause.

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