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

CASE NO. 502008CA037319XXXXMB AB

[redacted].,

Plaintiff,

v.

JEFFREY EPSTEIN, and [redacted],

Defendants.
_____/

Defendant Epstein's Motion For Sanctions Against Spencer Kuvin, Esq. , Motion For Protective Order And Alternative Motion To Identify

Defendant, JEFFREY EPSTEIN ("Mr. Epstein"), by and through his undersigned attorneys and pursuant to 1.280 Florida Rules of Civil Procedure, hereby moves for an Order of Sanctions Against Spencer Kuvin, Esq., Motion for Protective Order and Motion to Identify [redacted].. In support, Epstein states as follows:

1. Mr. Epstein's deposition was set for September 2, 2009, and Mr. Epstein was in attendance for said deposition.

2. Mr. Epstein is represented in this action by both the undersigned and his criminal attorney, Jack Goldberger, Esq., and both were present for the above deposition.

3. Spencer Kuvin, counsel for Plaintiff, [redacted]., was the attorney scheduled to take Mr. Epstein's deposition.

4. The deposition was set to timely begin at 10:00 a.m.

5. Directly after asking Mr. Epstein his name, Mr. Kuvin then asked Mr. Epstein, "[i]s it true, sir, that you have what's been described as an egg-shaped penis." See **Exhibit "A."** Accordingly, Mr. Kuvin chose to immediately set the tone of the deposition in a sarcastic and demeaning manner in an effort to harass, embarrass, humiliate and intimidate Mr. Epstein, thereby disregarding the entire deposition process. The undersigned made the appropriate objection and warned Mr. Kuvin that if this line of questioning continued the deposition would be adjourned. See Exhibit "A". In an attempt to continue to embarrass, humiliate, harass and intimidate Mr. Epstein, Mr. Kuvin continued with this line of questioning by referencing a document that Mr. Kuvin did not provide to the witness or to undersigned counsel and then by asking the following: "[s]ir, according to the police department's probable cause affidavit, one witness described your penis as oval shaped and claim[ed], when erect, it was thick towards the bottom but was thin and small - - towards the head portion, and called it egg-shaped . . . ." It was clear from Mr. Kuvin's tenor that his goal from the outset was not to have a meaningful deposition regarding the facts of his client's case. ***Instead, his goal was clear – to use the deposition process to embarrass, humiliate, intimidate and harass Mr. Epstein and thereafter contact the media and provide it with a copy of said deposition***.

6. Mr. Kuvin knew full well that Epstein would invoke his Fifth, Sixth and Fourteenth Amendment privileges afforded him under the United States Constitution. Mr. Kuvin also knew an order was issued in the related Federal Court proceedings sustaining Epstein's 5th Amendment privilege as to questions that, if answered,

would violate that privilege due to the testimonial aspect of any compelled answer or production request. Since Mr. Kuvin knew full well that Epstein would invoke his constitutional privileges, he chose to conduct the deposition in a manner that would harass and humiliate Mr. Epstein ***in an effort to gain media attention for Mr. Kuvin***.

7. Mr. Kuvin's intention to harass and humiliate Epstein at the September 2, 2009 deposition was further revealed by virtue of Mr. Kuvin filing a Motion, the very next day, seeking to photograph Epstein's penis. Then, shortly after filing that motion, Mr. Kuvin provided the media and/or the Palm Beach Post with a copy of Epstein's video-deposition, which was posted on the Palm Beach Post's website and other sites on the internet. This made Mr. Kuvin very happy, and is consistent with what Mr. Kuvin told Jack Goldberger, Esq., at the Palm Beach County Courthouse (i.e., Mr. Kuvin did not expect to make much money in this case, that he was a young lawyer and needed to market himself and get as much publicity as necessary for himself and his firm and that Epstein's case was another marketing method for himself and his firm). See Affidavit of Jack Goldberger, **Exhibit "B"**.

8. On September 14, 2009, a hearing was held on Plaintiff's Motion for Sanctions and Defendant's Motion to Terminate the September 2, 2009 deposition. At that hearing, the undersigned attempted to explain to this Court Mr. Kuvin's intention to gain media attention for his client and himself.

9. Shortly after that hearing, Mr. Kuvin, on or about September 17, 2009, provided the media with an interview regarding the Non-Prosecution Agreement (the "NPA"). Interestingly, Mr. Kuvin's client is not even listed on the NPA. Yet, Mr.

Kuvin felt compelled, once again, to harness the opportunity to speak to the media about his client's case and about Jeffrey Epstein. Mr. Kuvin stated: "Epstein victimized at least 33 girls. He could've faced at least 33 life sentences had he been convicted under these charges." See **Exhibit "C"**. "It's extremely unfair, extremely unfair to the 33 girls because it essentially brushes them aside as though nothing happened to them and it wasn't a big deal." Id. "There's no other person, no other person who would've gotten such a sweetheart deal had they not been as wealthy and as powerful as Jeffrey Epstein." Id. Are these comments not prejudicial to the administration of justice? Clearly, these comments, without supporting evidence, are nothing more than hyperbole and would never reach a jury. Nonetheless, Mr. Kuvin chose to make the comments in an effort to prejudice Epstein's right to a fair trial.

10. Mr. Kuvin solicits much publicity for himself and for his client who continues to travel under the pseudonym [redacted].. See **Exhibit "D"**, Palm Beach Post September 4, 2009 article, **Exhibit "E"**, Palm Beach Post Daily News July 13, 2009 article, **Exhibit "F"**, Palm Beach Post Daily News July 2, 2009 article, **Exhibit "G"**, Palm Beach Post 2009 article by Larry Keller, and **Exhibit "H"**, Palm Beach Daily News Shiny Sheet July 22-25, 2009 article. Moreover, some of the articles involving Jeffrey Epstein are directly "linked" to the Leopold~Kuvin website found at www.leopoldkuvin.com.

11. Mr. Kuvin forgets certain important points. First, Mr. Kuvin forgets that there remain several cases filed against Jeffrey Epstein in Palm Beach County – only one of which is his client. In that regard, Mr. Kuvin's pretrial-publicity stunts are

not only affecting the jury pool for his client, [redacted]., but may also be affecting the jury pool for the remaining cases. Second, Mr. Kuvin has taken a position opposite of his client's wish to remain anonymous and travel under the pseudonym, [redacted].. Finally, Mr. Kuvin forgets his oath which reads, in pertinent part: "I will abstain from all offensive personality and advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause for which I am charged." Mr. Kuvin took this oath; however, his publicity seems more important than the very oath he swore to uphold.

Motion for Sanctions

12. The trial court has inherent authority to award sanctions for various abuses and to govern its courtroom, including the improper and self serving delivery of a video deposition to the media. See *infra* for argument on media not having a right to pretrial discovery.

13. Rule 4-3.6, *Rules Regulating the Florida Bar,* states, in pertinent part:

> **(a) Prejudicial Extrajudicial Statements Prohibited.** A lawyer shall not make an extrajudicial statement that a reasonable person would expect to be disseminated by means of public communication if the lawyer knows or reasonably should know that it will have a substantial likelihood of materially prejudicing an adjudicative proceeding due to its creation of an imminent and substantial detrimental effect on that proceeding.
>
> **(b) Statements of Third Parties.** A lawyer shall not counsel or assist another person to make such a statement. Counsel shall exercise reasonable care to prevent investigators, employees, or other persons assisting in or associated with a case from making extrajudicial statements that are prohibited under this rule.

14. Mr. Kuvin violated Rule 4-3.6 by delivering the video-taped deposition (or causing same to be delivered) in a calculated effort to gain a media advantage, to try his case in the media, to obtain media coverage for himself and his firm, to

prejudice any future jury pool and to better position his case in the public light. This is clearly effecting Epstein's right to obtain a fair and just trial. State ex rel. Miami Herald Pub. Co. v. McIntosh, 340 So.2d 904, 910-11(1976)(Muzzling lawyers who may wish to make public statements to gain public sentiment for their clients has long been recognized as within court's inherent power to control professional conduct).

15. The issues of whether a party is acting in good [redacted] and whether to award attorney fees are issues expressly addressed to the trial court's exercise of discretion. See Event Services America, Inc. v. Ragusa, 917 So.2d 882 (Fla. 3d DCA 2005). As the Florida Supreme Court later explained, "[c]learly, a trial judge has the inherent power to do those things necessary to enforce its orders, to conduct its business in a proper manner, and to protect the court from acts obstructing the administration of justice." Levin, Middlebrooks, Mabie, [redacted], Mayes & Mitchell, P.A. v. United States Fire Ins. Co., 639 So.2d 606, 608-09 (Fla. 1994). Most recently, the Supreme Court in Bitterman v. Bitterman, 714 So.2d 356, 365 (Fla. 1998), recognized the inherent authority of a trial court to award attorneys' fees for bad [redacted] conduct against a party, even though no statute authorizes an award:

> The inequitable conduct doctrine permits the award of attorneys fees where one party has exhibited egregious conduct or acted in bad [redacted]. Attorney's fees based on a party's inequitable conduct have been recognized by other courts in this country. See Vaughan v. Atkinson, 369 U.S, 527, 530-31, 82 S.Ct. 997, 8 L.Ed.2d 88 (1962) (awarding attorney's fees based on respondent's "recalcitrance" and "callous" attitude); Rolax v. Atlantic Coast Line R.R. Co., 186 F.2d 473, 481 (4th Cir. 12951) (holding that attorney's fees were justified because" plaintiffs of small means have been subjected to discriminatory and Oppressive conduct by a powerful labor organization"). We note that this doctrine is rarely applicable. It is reserved for those extreme cases where a party acts "in bad [redacted],

> vexatiously, wantonly, or for oppressive reasons." Foster v. Tourtellotte, 704 F.2d 1109, 1111 (9th Cir. 1983)(quoting F.D. Rich Co. v. United States ex rel. Industrial Lumber Co., 417 U.S. 116, 129, 94 S.Ct. 2157, 2165, 40 L.Ed.2d 703 (1974)). "Bad [redacted] may be found not only in the actions that led to the lawsuit, but also in the conduct of the litigation." Dogherra v. Safeway Stores, Inc., 678 F.2d 1293, 1298 (9th Cir. 1982) (quoting Hall v. Cole, U.S. 1, 1593 S.Ct. 1943, 1951, 36 L.Ed.2d 702 (1973)).

16. In the instant case, it is reasonable to say that the trial court could and should conclude that Mr. Kuvin's conduct was vexatious in nature, and done for the purposes of embarrassing Epstein and, more significantly, for the purposes of bring media attention to himself. This type of careless and rogue behavior should not be tolerated.

Motion for Protective Order

17. The press is not entitled to pretrial discovery including, but not limited to, depositions, interrogatory responses and the like. Palm Beach Newspapers v. Burk, 471 So.2d 571)Fla. 4th DCA 1985). "Non-filed depositions are not court records available to the press." Id. at 575. "Similarly, during the last 40 years in which the pretrial processes have been enormously expanded, it has never occurred to anyone, so far as I am aware, that a pretrial deposition or pretrial interrogatories were other than wholly private to the litigants. A pretrial deposition does not become part of a "trial" until and unless the contents of the deposition are offered in evidence." Id. at 574. "A deposition does not become evidence in a case unless and until admitted by ruling of the court at a trial or hearing; that depositions very often contain matters that are not and can never be considered as evidence, since the scope of inquiry on depositions is not limited as in examination of a witness in a judicial proceeding; that persons not even parties to the case are often

compelled under process of law to divulge information that is not intended for use as evidence, but merely to elicit or lead to information that might explain other evidence or become admissible as evidence; and the taking of a deposition itself can hardly be categorized as a "judicial proceeding" for the simple reason that there is no judge present and no rulings nor adjudications of any sort are made by any judicial authority." Id. at 575. "Moreover, pretrial depositions and interrogatories are not public components of a civil trial. Id. at 576. Based upon the foregoing, an order from this court prohibiting the "dissemination of discovered information before trial is not the kind of classic prior restraint that requires exacting first Amendment scrutiny." Id. See also Rodriguez v. Feinstein, M.D., 734 So.2d 1162 (Fla. 3d DCA 1999)(any order restraining press access must consider less restrictive alternatives including, but not limited to, time and scope of limitations); and SCI Funeral Services of Florida, Inc. v. Light, 811 So.2d 796 (Fla. 4th DCA 2002).

Alternative Motion to Identify [redacted].

18. Mr. Kuvin has brought media attention to this case and to his client for the sole purpose of grandstanding, gaining a tactical advantage and to obtain media coverage for himself and his firm. Unfortunately for Mr. Kuvin, this conduct is in direct contravention with his client's wish to remain anonymous.

19. In Doe v. Lepley, 185 F.R.D. 605 (D. Ct. NV 1999), a sexual harassment case, the court reasoned that there is no express or implied right to bring an action anonymously. Id. at 606. Moreover, Fed. R. Civ. P 10(a) requires that the complaint include the names of the parties. Id. When Plaintiffs are permitted to proceed anonymously, the court must employ a balancing test to decide

if the plaintiff has a substantial privacy interest that outweighs the presumption of openness in judicial proceedings. Id., *citing*, Doe v. Frank, 951 F.2d 320, 323 (11th Cir. 1992)(requiring complaint to include the names of the parties serves more than administrative convenience, it protects the public's legitimate interests in knowing all the facts involved, including the identity of the parties -- thus denying request to proceed anonymously). The factors include:

a. whether the plaintiff is challenging governmental activity;

b. whether the party defending the suit would be prejudiced;

c. whether the plaintiff is required to disclose information of utmost intimacy;

d. whether the plaintiff is compelled to admit an intention to engage in illegal conduct, thereby risking criminal prosecution;

e. whether the Plaintiff would risk suffering injury if identified;

f. whether the interests of children are at stake; and

g. whether there are less drastic means of protecting the legitimate interests of either party.

Doe v. Frank, 951 F.2d at 323.

Plaintiff does not fall under any of the factors. Moreover, even if she did meet one of the factors, "[t]he fact that [a] Doe [Plaintiff] may suffer some personal embarrassment, standing alone, does not require the granting of a request to proceed under a pseudonym." Id; see also Doe v. Rostker, 89 F.R.D. 159 (N.D. Calif. 1981). Any substantial privacy interests Plaintiff has must outweigh the customary and constitutionally embedded presumption of openness to judicial proceedings, which her attorney seems to favor. Doe v. Frank, 951

F.2d at 323; Doe v. Bergstron, 2009 WL 528623 (C.A.9(Or.))(denying request to proceed anonymously in civil action by Plaintiff where Plaintiff's arrest, prosecution and acquittal were matters of public record).

20. In Sweetland v. State, 535 So.2d 646 (Fla. 1st DCA 1988), the court reasoned that the purpose of discovery is to eliminate the likelihood of surprise and to insure a fair opportunity to prepare for trial. Florida Rule of Civil Procedure 1.280(b)(1); see also Surf Drugs, Inc., v. Vermette, 236 So.2d 108, 111 (Fla. 1970)(stating that the rules of discovery should be afforded broad and liberal treatment to effectuate their purpose), citing, Hickman v. Taylor, 329 U.S. 495, 501, 507 (1947).

21. Next, the right to go to court to resolve disputes is a fundamental right. D.R. Lakes, Inc. v. Brandsmart U.S.A. of West Palm Beach, 819 So.2d 971 (Fla. 4th DCA 2002). All litigants are afforded an equal opportunity. Lingle v. Dion, 776 So.2d 1073 (Fla. 4th DCA 2001). The Florida Constitution establishes the right commonly known as access to courts. Mitchell v. Moore, 786 So.2d 521 (Fla. 2001). Courts shall be open to any person for the redress of any injury and justice shall be administered without sale, denial or delay. Art. I, §21, Fla. Const.; 10A Fla. Jur. 2d, Constitutional Law, §360.

22. Plaintiff's counsel has taken active steps in the media to taint any jury pool. Allowing [redacted]., an adult, to travel under the current pseudonym is not appropriate while her attorney wages media war against Epstein. Plaintiff, through her attorney, has not resisted bringing attention to herself and her case. Therefore, Plaintiff's full name should be disclosed.

WHEREFORE, Defendant, JEFFREY EPSTEIN, respectfully requests the Court enter an order sanctioning Mr. Kuvin, entering an appropriate protective order and, alternatively, identifying [redacted]. in the pleadings of this case, and for any additional relief the Court deems just and proper.

Certificate of Service

I HEREBY CERTIFY that a true copy of the foregoing was sent by fax and U.S. Mail to the following addressees on this ___ ay of Sept., 2009:

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