

1 UNITED STATES BANKRUPTCY COURT  
2 SOUTHERN DISTRICT OF FLORIDA

3  
4 IN RE: CASE NO. 09-34791-RBR

5 ROTHSTEIN ROSENFELDT ADLER, PA,

6  
7 Debtor.  
8 \_\_\_\_\_/

9 ECF #6421, 6440, 6455, 6456, 6457

10 September 27, 2018

11  
12 The above-entitled cause came on for hearing  
13 before the Honorable RAYMOND B. RAY, one of the Judges in  
14 the UNITED STATES BANKRUPTCY COURT, in and for the  
15 SOUTHERN DISTRICT OF FLORIDA, at 299 E. Broward Blvd.,  
16 Fort Lauderdale, Broward County, Florida on September 27,  
17 2018, commencing at or about 10:00 a.m., and the following  
18 proceedings were had.

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23 Transcribed from a digital recording by:  
24 Cheryl L. Jenkins, RPR, RMR  
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**APPEARANCES:**

**SEARCY DENNY SCAROLA BARNHART & SHIPLEY, by  
DAVID VITALE, Esquire  
On behalf of Bradley J. Edwards**

**LINK & ROCKENBACH, by  
SCOTT LINK, Esquire  
and  
RICE PUGATCH ROBINSON STORFER & COHEN, by  
CHAD P. PUGATCH, Esquire  
On behalf of Jeffrey Epstein**

**CARLTON FIELDS, BY  
NIALL McLACHLAN, Esquire  
On behalf of Fowler White Barnett, P.A.**

**PAUL G. CASSELL, Esquire (via telephone)  
On behalf of L.M., E.W. and Jane Doe**

**EDWARDS POTTINGER, by  
BRITTANY HENDERSON, Esquire  
On behalf of Farmer Jaffe Weissing**

**ALSO PRESENT**

**ECRO - Electronic Court Reporting Operator**

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1 THE COURT: Rothstein Rosenfeldt & Adler.

2 MR. McLACHLAN: Good morning, your Honor.

3 Niall McLachlan from Carlton Fields on behalf of Fowler  
4 White Barnett.

5 MR. PUGATCH: Good morning, your Honor.

6 Chad Pugatch, P-u-g-a-t-c-h, on behalf of Jeffrey Epstein.  
7 Co-counsel, Scott Link --

8 MR. LINK: Over here.

9 MR. PUGATCH: -- is here with me, L-i-n-k.

10 MR. LINK: Good morning, Judge.

11 THE COURT: Good morning.

12 MR. VITALE: Good morning, your Honor.

13 David Vitale, V, as in Victor, i-t-a-l-e, on behalf of  
14 Mr. Edwards.

15 MS. HENDERSON: Good morning, your Honor.

16 Brittany Henderson on behalf of Farmer Jaffe Weissing.

17 MR. CASSELL: Good morning, your Honor.

18 This is Paul Cassell, C-a-s-s-e-l-l, appearing by phone  
19 for intervenors L.M., E.W. and Jane Doe.

20 THE COURT: And, Ms. Henderson, you're  
21 representing who?

22 MS. HENDERSON: Farmer Jaffe Weissing,  
23 your Honor.

24 THE COURT: All right. Mr. McLachlan.

25 MR. McLACHLAN: Yes, thank you, Judge, and

1 just for the court reporter, my last name is  
2 M-c-L-a-c-h-l-a-n. I omitted that earlier.

3 Judge, we have several matters on the  
4 calendar this morning. We have the continued hearing on  
5 Fowler White's motion for protective order, that's Docket  
6 Entry 6421.

7 You may recall we had a hearing earlier, and  
8 the Court indicated that it would give, it would give  
9 Mr. Edwards time to file a response. He filed that  
10 response at 6437, and Fowler White filed a reply at 6443.

11 We also have a couple motions by  
12 Mr. Epstein, but the other motion of Fowler White, apart  
13 from the ones of Mr. Epstein, that Fowler White joined, is  
14 Fowler White's motion for order bifurcating proceedings,  
15 which is Docket Entry Number 6455, to which most of the  
16 parties have re -- or I think all of the parties have  
17 responded.

18 I'm not sure which order you'd like to take  
19 these in. The motion for protective order actually  
20 relates to documents they're seeking, I think, for --  
21 really for liability purposes. So we probably need to  
22 address that regardless of how your Honor rules on the  
23 bifurcation motion, but however you want -- whatever order  
24 you prefer, Judge.

25 THE COURT: Well, I think if we try the

1 motion to strike first, that will determine who will be  
2 involved in the proceeding.

3 MR. McLACHLAN: Correct, yes, Judge.

4 THE COURT: Then we'll deal with the motion  
5 to bifurcate as to liability and as to damages, and then  
6 we'll get into the discovery issues and damages. So we'll  
7 deal with bifurcation first.

8 MR. McLACHLAN: With bifurcation first?

9 THE COURT: I'm sorry, no, no, with the  
10 motion to strike.

11 MR. McLACHLAN: Very good. Thank you,  
12 Judge.

13 MR. PUGATCH: Good morning, your Honor.  
14 Again, Chad Pugatch, as co-counsel for Jeffrey Epstein.

15 Judge, it's our motion to strike. This is  
16 directed toward the intervenors, and it's directed toward  
17 their standing to proceed in this matter, other than that  
18 you've entered an order allowing them to intervene with  
19 regard to the issue of liability and the issue of the  
20 documents, but this is directed to their ability to seek  
21 damages, and to make it clear, there are three  
22 intervenors, there is L.W., and then there are two others,  
23 it's E.R. and Jane Doe, and ---

24 THE COURT: E.R.?

25 MR. PUGATCH: E.W., I'm sorry, E.W. and

1 Jane Doe. Those two were not parties to the original  
2 motion that led to your November 2010 order, they were not  
3 parties to the order.

4 THE COURT: Well, let me stop you there for  
5 a minute. Give me some background data.

6 Did E.W. and Jane Doe have pending state  
7 court litigation against Epstein?

8 MR. PUGATCH: That Mr. Link would have to  
9 answer.

10 MR. LINK: At which time, your Honor? Back  
11 when the agreed order was entered?

12 THE COURT: Any time.

13 MR. LINK: They did, yes, sir.

14 THE COURT: So they've had a trial and  
15 they've had an adjudication?

16 MR. LINK: Those cases were settled in June  
17 or July of 2010, over eight years ago.

18 THE COURT: About the same time this  
19 discovery was going down?

20 MR. LINK: Yes, sir, your Honor. Those  
21 cases were fully resolved and -- and, I'm sorry, for the  
22 court reporter, Scott Link, L-i-n-k.

23 ECRO: Make sure your microphone is on.

24 MR. LINK: Oh, I'm sorry, no.

25 MR. PUGATCH: It's on. I see the ---

1 MR. LINK: I have a green light.

2 MR. PUGATCH: The light is on.

3 MR. LINK: It may not be plugged in.

4 Your Honor, may I approach?

5 THE COURT: Yes.

6 MR. LINK: I'm sorry about that, madam court  
7 reporter.

8 Is that better?

9 ECRO: (No verbal response.)

10 MR. LINK: Great.

11 Your Honor, for the -- from a procedural  
12 standpoint, all three of the intervenors' claims were  
13 resolved by settlement and the exchange of releases.  
14 There are no pending claims, and there have not been for  
15 over eight years by the three folks that have intervened  
16 in this case.

17 THE COURT: But Epstein brought a cause of  
18 action against Edwards?

19 MR. LINK: Yes, sir.

20 THE COURT: What happened to that?

21 MR. LINK: So, that action was dismissed in  
22 2012. Mr. Epstein still has a pending action against  
23 Mr. Rothstein, but the action against Mr. Edwards was  
24 dismissed in 2012, and Mr. Edwards filed a ---

25 THE COURT: As a claim in the Rothstein

1 bankruptcy?

2 MR. LINK: No, sir.

3 THE COURT: A claim against Mr. Rothstein  
4 individually?

5 MR. LINK: Individually, yes, sir, in the  
6 state court, Palm Beach County, and in that action  
7 Mr. Edwards has pending today a claim against Mr. Epstein  
8 for malicious prosecution.

9 THE COURT: So, the pending litigation right  
10 now is Edwards against Epstein for malicious prosecution?

11 MR. LINK: That's one, and the second is  
12 Epstein against Rothstein.

13 THE COURT: But Rothstein is in prison for  
14 50 years.

15 MR. LINK: Yes, he is.

16 THE COURT: And has --

17 MR. LINK: There may not ---

18 THE COURT: -- incredible judgments against  
19 him?

20 MR. LINK: Probably not collectible,  
21 your Honor, but the case is still pending.

22 THE COURT: Well, it's going to be pending  
23 for 50 years because Judge Cohn, when they moved to vacate  
24 the sentence, said no. So apparently he's going to do his  
25 full term.

1 MR. LINK: I believe he is, yes, sir.

2 THE COURT: So the only litigation that's  
3 actually pending --

4 MR. LINK: The actual ---

5 THE COURT: -- is Edwards versus Epstein for  
6 malicious prosecution?

7 MR. LINK: Yes, sir, and that is set on  
8 Judge Hafele, the state court's trial docket --  
9 December 4th or 10th? December 4th, specially set.

10 THE COURT: So at the time the -- what was  
11 it, 26 boxes of documents?

12 MR. LINK: Roughly, yes, sir.

13 THE COURT: (Inaudible) filed in 2010. The  
14 law firm withdrew in 2012?

15 MR. LINK: Correct, that's right.

16 THE COURT: And they boxed the records, and  
17 they sat there for six or eight years?

18 MR. LINK: Yes, sir, until they were  
19 delivered to my office in 2018, this year.

20 THE COURT: And then when you got the  
21 records, you found the disk, and attached it to some  
22 discovery or exhibits, and it was brought to everyone's  
23 attention.

24 MR. LINK: That's exactly right, Judge,  
25 that's the chronology, yes, sir.

1 THE COURT: All right. Mr. Pugatch, I  
2 didn't mean to cut you off.

3 MR. PUGATCH: That's okay, Judge.

4 THE COURT: I wanted to make the record  
5 clear.

6 MR. PUGATCH: I absolutely wanted it to be  
7 clear, and there is no way that I could clarify it, as  
8 Mr. Link just did. So ---

9 THE COURT: Thank you, Mr. Link.

10 MR. PUGATCH: Okay.

11 MR. LINK: You're welcome, your Honor.

12 MR. PUGATCH: So, we come back to why we're  
13 here in Bankruptcy Court, Judge. We're here in Bankruptcy  
14 Court because they brought a petition for order to show  
15 cause why there should not be contempt and sanctions  
16 against Jeffrey Epstein and Fowler White, and that is  
17 based upon the allegation that your November 2010 order,  
18 which ordered that these, that these records be -- and the  
19 disk be not copied, and not be disseminated to anyone,  
20 that that order was allegedly violated.

21 Now, in order to claim those rights, and to  
22 claim damages flowing from, or sanctions flowing from  
23 that, these parties need to be parties to your order, or  
24 covered by the order, and clearly if you look at the  
25 motion and you go back to your order, the only party that

1 was covered in that was L.M., and of course Mr. Edwards  
2 and the firm.

3 E.W. and Jane Doe were not parties to the  
4 motion. They were not parties to the order. They're not  
5 covered by the order.

6 Mr. Cassell moved to intervene on their  
7 behalf. You allowed that intervention, we believe because  
8 in the state court action there is this companion issue of  
9 the attorney/client privilege related to these documents,  
10 and so the issue ---

11 THE COURT: That's before the state court  
12 judge.

13 MR. PUGATCH: It's before the state court  
14 judge.

15 THE COURT: The intervenors have been  
16 allowed to intervene in that state court proceeding --

17 MR. PUGATCH: Yes, that's my understanding.

18 THE COURT: -- and they are being heard?

19 MR. PUGATCH: That's correct.

20 MR. LINK: That is correct, your Honor.

21 They're ---

22 THE COURT: And that judge has the documents  
23 under his control. There is apparently a special master.

24 MR. LINK: It's not a special master.

25 Judge Hafele is doing it himself.

1 THE COURT: So he's got both hands on?

2 MR. LINK: He's got both hands on.

3 THE COURT: All right. Continue.

4 MR. LINK: So the record is clear, the three  
5 intervenors intervened in the state court action, not as  
6 parties to the litigation, but for the limited purpose of  
7 asserting an attorney/client privilege.

8 THE COURT: Which he has yet to rule on.

9 MR. LINK: Which he has not ruled on, that's  
10 correct, Judge.

11 THE COURT: All right.

12 MR. PUGATCH: So, Judge, the simple issue  
13 here is how can these parties, E.W. and Jane Doe, seek to  
14 be covered by sanctions or damages for violation of an  
15 order when they were not parties to the order? Plain and  
16 simple.

17 So, we've asked that the order be entered  
18 striking their standing to participate on that basis.

19 As you pointed out in suggesting this motion  
20 be heard first, that would substantially limit the playing  
21 field as to who can complain, and we can move on to the  
22 other motions based upon that.

23 THE COURT: Well, I've read the two motions,  
24 Docket Entry 6456, 6457, and the response, 6464.

25 Let me hear from the respondent.

1 MR. CASSELL: Thank you, your Honor. This  
2 is Paul Cassell on behalf of the three intervenors.

3 I think in terms of making the record clear,  
4 an important piece of the puzzle has been left out. I  
5 represent both L.M. and E.W. in an action that is in front  
6 of Judge Marra in the U.S. District Court for the Southern  
7 District of Florida. That was filed in July of 2008, and  
8 it remains pending today.

9 Both L.M. and E.W. have summary judgment  
10 motions pending in that action. That action is filed as  
11 Jane Does' -- that is L.M. and E.W. -- versus United  
12 States, but Mr. Epstein has moved to intervene, and  
13 intervention has been granted. So he is an intervenor in  
14 that case.

15 THE COURT: So there is litigation --

16 MR. CASSELL: That's an important part ---

17 THE COURT: -- going in the District Court  
18 between the three intervenors, the government and  
19 Mr. Epstein?

20 MR. LINK: Your Honor ---

21 MR. CASSELL: Two intervenors, L.M. and E.W.  
22 Jane Doe is not a party to that litigation, and the reason  
23 that's important to be in the record, your Honor, is the  
24 materials that are at issue in this case could be used by  
25 Mr. Epstein in connection with that action, should he

1 decide to file motions of various types there.

2 Now, with regard to the motion to strike  
3 specifically, I think it's important, again, to recall why  
4 we're here in front of you, rather than in front of  
5 Judge Hafele.

6 We asked Judge Hafele to take jurisdiction  
7 over Fowler White, and he said, I have no jurisdiction  
8 over Fowler White. That is for the bankruptcy judge. And  
9 so that is why we've ended up here in front of you.

10 Frankly, we're a bit surprised to see this  
11 motion to strike being presented now. As your Honor is  
12 aware, on March 30th of this year we filed -- that is E.W.  
13 and Jane Doe filed a motion to intervene, and in that  
14 motion they asked to intervene both as a matter of right  
15 and permissibly to, quote, protect their privileges,  
16 protections and confidentiality interests in the materials  
17 covered by this order, and to seek sanctions for  
18 violations of that order. That was their motion to  
19 intervene, and there were, I think, approximately five  
20 pages of explanation as to why E.W. and Jane Doe believe  
21 they have an interest in the confidentiality and the  
22 material that was covered by this Court's order.

23 And on April 16th, then this Court granted  
24 the motion to intervene, that's Docket Entry 6360, and it  
25 was granted not only as to L.M., but also as to E.W. and

1 Jane Doe.

2           The motion that is in front of you right now  
3 attempts to, in our view, relitigate your decision  
4 allowing them to intervene in this case, and of course the  
5 only issue that's presented in the current motion in front  
6 of you is that E.W. and Jane Doe lack standing to proceed,  
7 but in order to have standing all a litigant needs to do  
8 is allege some actual injury resulting from the action in  
9 question, and we have five pages of argument explaining  
10 why E.W. and Jane Doe had actual injury resulting from the  
11 breach of the order.

12           So we think the issue was already decided,  
13 but if your Honor wants to revisit it, we think there are  
14 five pages in the record very clearly explaining why E.W.  
15 and Jane Doe have interest in the confidentiality order  
16 that your Honor entered back in 2010.

17           MR. PUGATCH: Judge, there is a difference  
18 between -- this is Chad Pugatch again. There is a  
19 difference between having standing to argue about the  
20 confidentiality or the attorney/client privilege related  
21 to the documents, and having standing to seek damages by  
22 virtue of a violation of an order when you were not party  
23 to the motion and order, and there is a difference between  
24 damages that you seek as an intervenor due to a course of  
25 conduct, which is normally brought in a lawsuit, and

1 sanctions that are being sought for alleged contempt of  
2 court for violating a court order. We're here with regard  
3 to the latter.

4 This is an action seeking contempt and  
5 sanctions for violation of a court order, when these two  
6 parties, these two intervenors were not parties to the  
7 motion or the order.

8 Our understanding was, when this was all  
9 pointed out to you, and you were aware of the state court  
10 issues regarding attorney/client privilege, and  
11 Mr. McLachlan, I believe, raised that very issue, and we  
12 joined in that issue, and you said you were going to allow  
13 the intervention because of the companion issues in the  
14 state court. It was never an understanding that that was  
15 determining the issue of whether these parties were  
16 entitled to seek damages, and that's why we're here, and  
17 that's why we filed the motion, limited to standing, and  
18 their motion to strike the damage claims, and their two  
19 separate motions to strike. We're really dealing with the  
20 argument on both of them at this time, just so the record  
21 is clear. There is the one that we started with, which is  
22 6456, then there is 6457, the other motion to strike,  
23 which relates to the damage claims.

24 And, again, there is nothing in the argument  
25 that Mr. Cassell made that supports that those two

1 intervenors have damage claims in this action, and that's  
2 what we're seeking to limit.

3 THE COURT: Now, and Edwards' client at the  
4 time this Bankruptcy Court order was entered was the  
5 attorney for L.W.?

6 MR. PUGATCH: L.M.

7 THE COURT: L.M.

8 MR. PUGATCH: I misspoke, it's L.M., E.W.  
9 and Jane Doe.

10 MR. McLACHLAN: Judge, if I may be heard --

11 THE COURT: Yes.

12 MR. McLACHLAN: -- whenever it's convenient?  
13 Niall McLachlan, again, for Fowler White.

14 And the reason I'd like to be heard, Judge,  
15 is we joined -- Mr. Epstein raised this issue in a  
16 footnote to his motion to compel discovery.

17 We then joined on that issue expressly in  
18 our limited joinder to that after the intervenors'  
19 claimed, well, it's insufficient to raise an issue by  
20 footnote.

21 What we pointed out in our limited joinder,  
22 which is at Docket Entry 6454, is that the agreed order  
23 cancelling hearing, which is what this whole case is  
24 about, and that's the order under which the Court reserved  
25 jurisdiction to enter sanctions in favor of Farmer Jaffe,

1 Brad Edwards and his client, singular, that order was  
2 entered on L.M. and Brad Edwards' motion for relief of an  
3 amended order, which is on Docket Entry Number 1120.

4 It was L.M. and Edwards who had sought the  
5 relief on which the order, from which everyone is trying  
6 to claim damages, was entered, and I just want that to be  
7 very clear. I think that's why the order specifically  
8 says, Mr. Edwards, Farmer Jaffe, or his client, singular,  
9 because only one client had joined in any request for  
10 relief.

11 THE COURT: Your motion to sever,  
12 Mr. Pugatch, is directed to E.W. and Jane Doe?

13 MR. PUGATCH: The motion to strike.

14 THE COURT: Motion to strike.

15 MR. PUGATCH: Yes, the two motions to strike  
16 are directed to those two parties, E.W. and Jane Doe,  
17 your Honor, and so the record is clear, the original  
18 November 10th order is Docket Entry 1068, and the language  
19 that Mr. McLachlan just quoted from is in the order  
20 itself, and it's cited in our motion to strike, Docket  
21 Entry 6457, in the middle of Page 2. I'm sorry, the  
22 agreed order is 1194.

23 MR. CASSELL: Your Honor, this is  
24 Paul Cassell, if I may just briefly respond?

25 THE COURT: Yes.

1           MR. CASSELL: Your Honor, going back to  
2 2010, it's true the order related only to L.M., because  
3 L.M. was the only of the -- the only one of the three  
4 victims before the Court at that time.

5           However, the underlying documents at issue  
6 involve three victims, and that is why, when the breach of  
7 this Court's order became apparent earlier this year, the  
8 three people who have confidentiality interests and  
9 stakes, that is privileged, protections, work product  
10 information, security concerns, all came -- all three of  
11 them came before you to intervene, and I think what we  
12 have --

13           THE COURT: But they can protect those  
14 rights in state court.

15           MR. CASSELL: Not against Fowler White,  
16 your Honor. The state court judge indicated that he did  
17 not have jurisdiction over Fowler White, which is why we  
18 then came over to this Court, because the state judge had  
19 told us that only you have jurisdiction over Fowler White,  
20 and we raised all these issues in our motion to intervene,  
21 and I think we have essentially a word game going on from  
22 the other side.

23           We sought to intervene, quote, to seek  
24 sanctions for violation, close quote, of the Court's  
25 order. So we are now seeking sanctions for violation of

1 the order, specifically damages, among other things, and  
2 if we're not allowed to seek damages, I'm not clear as to  
3 what sanctions the other side thinks that we would be  
4 entitled to seek.

5 So all we're asking is that your Court  
6 adhere to your early ruling, allowing all three of the  
7 victims to intervene in this case for purposes of, quote,  
8 seeking sanctions, close quote, for violation of the  
9 Court's order.

10 THE COURT: There was no finding that there  
11 was a violation of the Court's order.

12 MR. PUGATCH: That has not been litigated --

13 MR. CASSELL: Correct.

14 MR. PUGATCH: -- yet, Judge. That's ---

15 THE COURT: All right.

16 MR. PUGATCH: That's what's set for trial.

17 THE COURT: Anything further from the  
18 parties in reference to Docket Entry 6456, 6457?

19 MR. PUGATCH: No, sir.

20 MR. McLACHLAN: No, your Honor.

21 THE COURT: All right. I'm going to ---

22 MR. CASSELL: No, your Honor.

23 THE COURT: All right. I'm going to grant  
24 the motion to strike, order by Mr. Pugatch, for the  
25 reasons argued in the pleadings and the arguments today

1 before me.

2 MR. PUGATCH: Thank you, Judge.

3 THE COURT: Mr. Pugatch, see to the order.

4 MR. PUGATCH: Yes, sir.

5 MR. VITALE: Your Honor?

6 THE COURT: Yes.

7 MR. VITALE: David Vitale, V-i-t-a-l-e.

8 May I have a clarification on that order?

9 Oh, I'm sorry, I apologize.

10 The striking of E.W. and Jane Doe for the  
11 purposes of seeking damages, are they still -- are those  
12 two parties still intervenors for purposes of liability?  
13 Because my understanding from Mr. Pugatch's argument was  
14 that they may have standing to argue for liability, but  
15 because they're not parties to the order they don't have  
16 standing to claim damages, and I just want to understand  
17 that point, because I think it will be relevant to the  
18 bifurcation issue.

19 THE COURT: Response.

20 MR. LINK: Yes, sir. I don't know how they  
21 can have standing to argue about liability if they were  
22 not party to that order.

23 Our position has been they certainly have  
24 standing if they want to assert privilege. This Court has  
25 said that issue is for the state court, and that issue is

1 before the state court.

2 So, the only issue before this Court, the  
3 very narrow issue is, was there a violation of the order  
4 by Fowler White and by Mr. Epstein and, if so, were there  
5 any damages to the parties to that order? So, these folks  
6 are not parties, so I'm not sure ---

7 THE COURT: They're not parties to the  
8 order.

9 MR. LINK: They're not parties to the order,  
10 your Honor, for liability or damages.

11 Thank you, Judge, and thank you for letting  
12 me speak.

13 THE COURT: Does that answer your question?

14 MR. CASSELL: Your Honor, this is  
15 Paul Cassell. If I could just briefly be heard?

16 Back in April this Court granted both E.W.  
17 and Jane Doe permission to intervene in this matter,  
18 that's Docket Entry 63 ---

19 THE COURT: There was no finding that they  
20 were entitled to damages or that they had a claim.

21 MR. CASSELL: We were entitled to ---

22 THE COURT: They asked to intervene and take  
23 a position.

24 MR. CASSELL: We asked to intervene to seek  
25 sanctions for violation of the Court's order and --

1 THE COURT: My ruling ---

2 MR. CASSELL: -- and to provide clarity ---

3 THE COURT: -- has been dictated into the  
4 record. Mr. Pugatch, see to the order.

5 MR. PUGATCH: Thank you, your Honor.

6 THE COURT: Turning now to the motion to  
7 bifurcate liability and damages, Docket Entry 6455,  
8 response 6463, 6465, 6466.

9 MR. LINK: Your Honor, before we start on  
10 that motion, can I just make the Court aware that your  
11 ruling will moot Mr. Epstein's motion --

12 THE COURT: To compel.

13 MR. LINK: -- to compel, yes, sir.

14 THE COURT: All right. I'm going to get to  
15 that next.

16 MR. LINK: Okay. Thank you, Judge.

17 MR. McLACHLAN: Thank you, your Honor.

18 Niall McLachlan again for Fowler White. This is the  
19 motion to bifurcate, Docket Entry 6455. All the parties  
20 have responded to the motion.

21 I won't spend a lot of time on the motion.

22 THE COURT: Well, Epstein is the only person  
23 that's objected.

24 MR. McLACHLAN: That's exactly what I was  
25 about to say, Judge, that's right.

1 MR. LINK: Would you like to hear from us,  
2 your Honor?

3 THE COURT: Yes.

4 MR. PUGATCH: We can make the response very  
5 quick, Judge.

6 Mr. Epstein didn't do anything wrong.  
7 You've got already filed his sworn testimony, when we had  
8 to comply with your pretrial order, that says I didn't  
9 have it, I didn't disseminate it, I didn't do anything  
10 with it, and so we want this over with. We don't want  
11 this dragged out. It's already been dragged out for  
12 months, and so you've set a trial date, and we want the  
13 whole thing dealt with all at once.

14 So we're asking that if there is going to be  
15 a trial, it deal very -- it will be very quick dealing  
16 with the issue of who did what, and I agree the  
17 depositions should determine whether there is liability  
18 out there or not, and then if we get beyond that, we have  
19 the day set aside, we should litigate the issue of  
20 damages.

21 And for clarification purposes, our motion  
22 to compel on the depositions is only mooted as to the two  
23 parties where you just struck standing. There is still  
24 one pending as to the one --

25 THE COURT: That's why I was going to take

1 it separately.

2 MR. PUGATCH: -- yes, remaining intervenor.

3 So, Judge, it's your discretion to do as you  
4 will, but Mr. Epstein wants to make it clear, he wants to  
5 get this over with.

6 Thank you.

7 THE COURT: Mr. McLachlan.

8 MR. McLACHLAN: Thank you, your Honor.

9 I think all of the parties want to get this  
10 over with, but there are important issues of due process  
11 at stake.

12 Fowler White, in order to defend any damage  
13 claim, needs time to get discovery. The intervenors, in  
14 particular, have been very coy, and have not indicated,  
15 despite numerous requests, how do they intend to prove  
16 their emotional distress claims, or now we are only down  
17 to one, so I'll back off on that, I know there is only one  
18 intervenor left, but intervenors' counsel has refused to  
19 say whether they're going to hire an expert, whether  
20 they're going to appear themselves. What he's actually  
21 said so far, and he just put this in his response, I think  
22 it was filed yesterday, is, well, we don't think we're  
23 going to hire an expert, but they're going to be able to  
24 prove their emotional distress damages -- the remaining  
25 intervenor is going to be able to prove her emotional

1 distress damages based purely on the testimony of  
2 Mr. Epstein and Fowler White's representative. That's --  
3 let's just put it, it's unsupported, and it's an  
4 unsupportable position.

5 So, given that the hearing is scheduled for  
6 October 26th, we believe it would be both in the interest  
7 of due process, which is paramount, but also, of course,  
8 in the interest of judicial economy. Fowler White  
9 continues to believe the Court will find, if not  
10 compliance with the order, then substantial good faith  
11 compliance and, therefore, no contempt.

12 And if that's the case, we don't need to go  
13 into a day, or two, or three -- maybe two days of expert  
14 testimony. We believe we need extensive discovery. We  
15 also need discovery not only from the remaining intervenor  
16 at this point, but also from the lawyers who are all  
17 claiming attorney's fees, and there is simply no time for  
18 that sort of discovery prior to October 26th, and so for  
19 those two reasons, Judge, we respectfully maintain that  
20 bifurcation would be in the parties' interest, Fowler  
21 White's interest, certainly.

22 Thank you, Judge.

23 THE COURT: All right. The motion to  
24 bifurcate, Docket Entry 6455, will be granted, order by  
25 Mr. McLachlan.

1 MR. McLACHLAN: Thank you, Judge.

2 THE COURT: All right. The motion to compel  
3 intervenors, Docket Entry 6440 brought by Epstein.

4 MR. PUGATCH: Yes, Judge. We'll leave that  
5 in your discretion. We could argue it now, or we could  
6 await the outcome of the liability trial, now that  
7 you've --

8 THE COURT: No, we're going to --

9 MR. PUGATCH: -- bifurcated it.

10 THE COURT: -- on the motion to compel,  
11 we're going to strike E.W. and Jane Doe from the motion to  
12 compel --

13 MR. PUGATCH: Yes, sir.

14 THE COURT: -- because they're no longer at  
15 issue in this case.

16 MR. PUGATCH: Yes, sir. So, we can argue it  
17 now, or if you want to await the outcome of your liability  
18 decision, because if you rule that there is no liability,  
19 that would moot the need to even deal with this. So we're  
20 prepared either way.

21 THE COURT: We'll continue L.M. to be heard  
22 after the liability phase --

23 MR. PUGATCH: Yes, sir.

24 THE COURT: -- has been determined.

25 MR. PUGATCH: Judge, may I suggest, maybe

1 just for housekeeping, you want to carry that motion over  
2 to October 26th, with the understanding that this is the  
3 place saver, and then you can ---

4 THE COURT: Status conference.

5 MR. PUGATCH: Yes.

6 THE COURT: All right. Strike or deny the  
7 motion to compel to E.W. and Jane Doe for the reasons --

8 MR. PUGATCH: It's moot.

9 THE COURT: -- we're discussed, and continue  
10 the motion to compel against L.M., to be heard at a later  
11 date, and a status conference will be scheduled on the  
12 motion --

13 MR. PUGATCH: Right.

14 THE COURT: -- for whatever date we have.

15 MR. PUGATCH: Yes, sir.

16 And, Judge, if it wasn't clear, when I said  
17 it was moot, I meant the motion to compel, not obviously  
18 the motion to strike.

19 THE COURT: All right, that then takes us to  
20 the motion for protective order, Docket Entry 6421,  
21 response 6437, reply 6443.

22 MR. McLACHLAN: Thank you, Judge.

23 Niall McLachlan again for Fowler White.

24 We -- as I mentioned earlier, we briefed  
25 this motion a few months ago. A couple months ago we had

1 a preliminary hearing. It was set on just a few days  
2 notice. So you Honor, after hearing argument, gave  
3 Mr. Edwards an opportunity to file a response. He did  
4 that. Fowler White then filed a reply at Docket  
5 Entry 6443. Mr. Edwards' response is at 6437.

6 Judge, we believe the motion should be  
7 granted based primarily on the motion for sanctions, which  
8 wasn't just a motion for sanctions, it was called motion  
9 for issuance of order to show cause why Fowler White and  
10 Jeffrey Epstein should not be held in contempt, to permit  
11 discovery, and for other relief.

12 We had a hearing on that motion, and the  
13 parties' responses on April 13th, at which, and I've  
14 quoted the transcript in depth, there was substantial  
15 discussion about discovery, and your Honor said we're not  
16 getting into all of that, you can have two depositions.  
17 You can depose Mr. Epstein and you can depose Fowler  
18 White's corporate representative on very limited issues,  
19 and that was, chain of custody of the disk, and the  
20 alleged violation of the agreed order -- I'm sorry, chain  
21 of custody of documents on the disk, and the alleged  
22 violation of the agreed order.

23 I think the ruling was fairly clear from the  
24 Court's comments, and I've, as I said, quoted them  
25 extensively in our motion.

1           The order to show cause echoed the Court's  
2 oral pronouncement, and that was two depositions -- it  
3 actually said more, it said people at Fowler White who may  
4 have knowledge of the custody of the disk, but there was  
5 no reference to production of documents, as was  
6 specifically requested in Mr. Edwards or Farmer Jaffe's  
7 motion.

8           In addition, Judge, we believe that the  
9 scope of what Mr. Edwards is seeking is almost  
10 ridiculously overbroad. His request, essentially, are all  
11 communications between Fowler White, Mr. Epstein and any  
12 representative of Mr. Epstein which relate to the subject  
13 disk, or any information derived from documents or data on  
14 the disk.

15           Now, your Honor probably remembers that  
16 there were 27,540 pages of documents produced. Over  
17 21,500 pages, there was no dispute Fowler White was  
18 supposed to get those because they were produced back to  
19 Fowler White as non-privileged documents. There was only  
20 approximately 6,400 documents which remain on the  
21 privilege log.

22           So to ask for all documents which relate to  
23 any information derived from documents or data on the  
24 disk, especially during the period that Fowler White  
25 represented Mr. Epstein, for about a year after the order

1 was entered, by definition calls for attorney/client  
2 privilege, because any lawyer, when discussing the status  
3 of a case with his client, is going to discuss the  
4 non-privileged materials that have been turned over, the  
5 21,000 pages of non-privileged materials.

6 Now, Mr. Edwards in his response says, oh,  
7 Judge, there is an admission for you, because if Fowler  
8 White contends that there was any attorney/client  
9 privilege materials, that's a gotcha, they must be talking  
10 about the privileged documents. But as I just explained,  
11 that couldn't be further from the truth.

12 Additionally, Mr. Edwards argued that  
13 because your Honor's order to show cause talked about the  
14 parties submitting exhibit binders, well, exhibits mean  
15 documents and, therefore, you have to have anticipated  
16 document production.

17 Well, that doesn't make sense, because it  
18 was a standard order for an evidentiary hearing, and under  
19 the local rule any exhibit binder would have to, at a  
20 minimum, include written declarations of the direct  
21 testimony, and if Mr. Edwards has documents which can show  
22 that these were actually privileged materials, which were  
23 filed in the state court, we think it's his burden,  
24 obviously those documents would have to be in the file --  
25 in the exhibit binder.

1           So, I don't know that -- it seems, and  
2 especially if you look at the limited scope of the issues  
3 before the Court, the volume of documents would be  
4 inordinate, and is out of proportion to the narrow issues  
5 in this case.

6           Interestingly, as I point out in the reply  
7 at 6443, I spoke to Mr. Edwards' counsel, and I said,  
8 look, just to be very clear on this, so we don't waste the  
9 Court's time, if really what you're asking for is  
10 communications regarding privileged materials on the disk,  
11 there aren't any.

12           So, any suggestion that that's really what  
13 they're seeking here, and not the broader universe of  
14 documents, which could take months to prepare a privilege  
15 log, is just -- it doesn't hold water, Judge, and it just  
16 seems -- I think the pronouncements at the hearing were  
17 clear, the order to show cause is clear, they can take the  
18 deposition of Fowler White's representative, he will  
19 testify, and I think it's going to be fairly clear.

20           To give them every communication with  
21 Mr. Epstein or his lawyers relating to any document that  
22 may have been on the disk far exceeds what was --

23           THE COURT: How did --

24           MR. McLACHLAN: -- anticipated.

25           THE COURT: -- Fowler White come to have the

1 disk in its possession?

2 MR. McLACHLAN: Yes, Judge. Well, that's an  
3 interesting point in and of itself, that we don't know the  
4 answer to, but here is what we do know, under your ---

5 THE COURT: Somebody made the disk.

6 MR. McLACHLAN: Somebody made the -- well,  
7 we know who made the disk. We know who made the disk,  
8 because Fowler White, and this is in our response to the  
9 motion for order to show cause, Fowler White was told, you  
10 will get the original CDs, and you will then print the  
11 documents after you Bates number them.

12 The only way for that to be done, and we've  
13 put that in a motion for order to show cause, is you copy  
14 the documents into a short term temp file, then you  
15 transpose the Bates number over those documents and burn  
16 the results onto the disk. That's the disk that we  
17 returned. We returned original disks to Judge Carney, we  
18 have an email to that effect. That disk was then -- well,  
19 we produced the, I think, seven bankers boxes of documents  
20 to Farmer Jaffe within three days of us receiving the  
21 disks from Judge Carney, and now what we're left with is  
22 an allegation that a disk that contained every one of the  
23 documents was in one of the 36 boxes that was delivered to  
24 Mr. Epstein's new counsel, Mr. Link, seven and a half  
25 years after the documents were Bates numbered and printed

1 in accordance with the order.

2 We don't know how the disk got in the box.  
3 We haven't been able to examine the disk. Mr. Vitale  
4 indicated, I think this morning, that he would be willing  
5 to agree to some relief that would allow Fowler White to  
6 examine it, because we had a couple of theories, Judge,  
7 three theories, I think there are only three.

8 If the disk that was in one of the 36 boxes  
9 contained all of the documents, privileged and  
10 non-privileged, there are really three ways that I can  
11 envision anyway, and I'm purely guessing. One of them is  
12 Judge Carney, when he got finished with his duties, said,  
13 hey, Fowler White, here is a disk you guys sent me a year  
14 and a half ago, and someone at Fowler White just went,  
15 Epstein, oh, we're finished with this case, and just threw  
16 it in the box.

17 The second theory is that in one of the five  
18 boxes of bankers boxes -- one of five banker boxes of  
19 documents, of non-privileged documents that were produced  
20 back to us by Farmer Jaffe, that a paralegal printed the  
21 documents off the disk and mistakenly left it in the box,  
22 and the third issue, which is possible, but we just don't  
23 know, is that whoever -- the IT person who burned the disk  
24 somehow kept a copy and dropped it in the file.

25 But what will be testified to by the

1 corporate representative is, we have no idea -- if that  
2 was the disk, we have no idea how to get there. However,  
3 we have found no indication that anyone looked at any  
4 privileged materials, there is no time entered for that.

5 And so the only thing that is clear, is that  
6 from whenever the disk was received by Fowler White, and  
7 whether it was in November two thousand -- or actually it  
8 was December 7, 2010, when the original disks were  
9 delivered to us for copying, or some time thereafter, what  
10 we do know is the disk was never used. It was in a box  
11 that was in storage.

12 The first time these privileged materials  
13 surfaced was seven and a half years later, when Mr. Link  
14 said, please send me all of Mr. Epstein's files, and  
15 Fowler White sent him the 36 boxes of documents, and  
16 Mr. Link contends that there was a disk in that, one of  
17 those 36 boxes that had all of the documents on it.

18 THE COURT: That he had no knowledge of.

19 MR. McLACHLAN: He had no prior knowledge of  
20 it, right. Mr. Link said, oh, what's this? It's a disk.  
21 Let me look at some documents, and that's how this whole  
22 case came about.

23 THE COURT: Well, it came about when he  
24 apparently added it as an exhibit or something in the  
25 state court proceeding, and then the other side said, wait

1 a minute.

2 MR. McLACHLAN: That's exactly right, Judge.  
3 That's right.

4 THE COURT: All right. Response.

5 MR. VITALE: Thank you, your Honor.  
6 David Vitale, V, as in Victor, i-t-a-l-e.

7 Your Honor asked how did the disk get into  
8 the box, and Mr. McLachlan gave you three theories. I  
9 presume he came up with those three theories by reviewing  
10 documentation relevant to the chain of custody of the  
11 disk.

12 And he finished with ---

13 THE COURT: Wait a second. They don't know  
14 who made the disk.

15 MR. VITALE: I believe they said they did  
16 know who made the disk.

17 MR. McLACHLAN: We understand, Judge --  
18 Niall McLachlan again.

19 We understand that in order to Bates number  
20 and print the documents a disk would have had to have been  
21 made.

22 What we don't understand, and for counsel to  
23 say he believes I understand this from our review of  
24 documents is simply inaccurate, because these exact same  
25 theories, and that's all they are, were in our initial

1 response to the motion for order to show cause because we  
2 simply didn't know.

3 MR. VITALE: Well, I would just point out  
4 that I believe what was said in part was that we have an  
5 email to that effect. So there is definitely some  
6 correspondence that must have been relied upon unless  
7 these three theories are being hatched by presumptions and  
8 speculation.

9 THE COURT: Well, you won't know until you  
10 take the deposition of the Fowler White representative.

11 MR. VITALE: Or, your Honor, I would know if  
12 we have -- correct, once we take the deposition, presuming  
13 that Fowler White is going to produce the limited  
14 documents that we've requested, that deal directly with  
15 chain of custody and documents on the disk and, you know,  
16 to go back to the evidentiary hearing and move forward to  
17 it, Mr. Edwards is going to have the burden based on clear  
18 and convincing evidence to show that this Court's order  
19 was violated. That is a very high burden, and Fowler  
20 White has expressed concerns for due process in defending  
21 against this charge.

22 Mr. Edwards should also be entitled to  
23 reasonable discovery to meet a very high evidentiary  
24 burden.

25 THE COURT: What's reasonable discovery,

1 every email that transpired in the time Fowler White --  
2 when Fowler White got the documents in the discovery from  
3 the trustee?

4 MR. McLACHLAN: Yes, Judge, the documents  
5 came from the trustee, that's correct.

6 THE COURT: And then they were copied and  
7 given to Farmer Jaffe?

8 MR. McLACHLAN: Well, they were printed  
9 and ---

10 THE COURT: Printed and given to Farmer  
11 Jaffe.

12 MR. McLACHLAN: That's right, and, Judge,  
13 just to reference the email, the email that I'm referring  
14 to, that's the email that was attached to our response to  
15 the motion for order to show cause. Counsel has those  
16 emails. They were the emails where Farmer Jaffe and  
17 Fowler White's representatives said -- Farmer Jaffe said,  
18 I'm sending you the disk -- or Fowler White said, I'm  
19 sending someone over to pick up the disks from  
20 Judge Carney. We'll print them, we'll deliver them to  
21 you, and we understand that you don't want to have a  
22 representative there at the time.

23 Three days later we printed the documents,  
24 we're sending them to you, and we're returning the  
25 original disk to Judge Carney. Those emails are attached

1 to the response to the order to show cause.

2 THE COURT: All right. So you have those  
3 emails?

4 MR. VITALE: Those emails, your Honor, and  
5 I'll go through the duces tecum request, I think that  
6 might be the best way to handle it. Your Honor asked what  
7 limited discovery are we looking for. The first request  
8 is all communications and all records relating to the  
9 chain of custody of the subject disk itself and/or  
10 relating to the chain of custody of information derived  
11 from documents or data contained on the subject disk.  
12 That's two requests. The first is, I'd like everything  
13 you have related to the chain of custody of this disk.

14 The representation has been made repeatedly  
15 that this disk sat in a box for seven or eight years.  
16 Well, there should be communications to that effect, once  
17 the printing was done, once everything was done.

18 THE COURT: Not if anybody didn't know that  
19 the disk was in the box.

20 MR. VITALE: There would be a time record,  
21 your Honor, from Fowler White. Whoever handled the  
22 copying and was handling the subject disk, the person who  
23 they alleged physically put that in the box, that's a  
24 paralegal or an attorney. Fowler White keeps time  
25 records. Those time records will show us about chain of

1 custody of the disk.

2 The second portion relating to information  
3 derived from ---

4 THE COURT: And what time period would that  
5 be?

6 MR. VITALE: That would be from the date of  
7 your order to the present. They should -- the order is  
8 very clear they were not to retain the subject disk.  
9 There is a subject disk that has been retained. Chain of  
10 custody from November 2010 to present is relevant for the  
11 determination of liability at the show cause hearing.

12 I can't think of a more targeted request  
13 than give me all the documents, time sheets, emails,  
14 written papers that relate to the chain of custody of the  
15 subject disk that we allege you are in possession of in  
16 violation of this Court's order.

17 The second part of number one, your Honor,  
18 and I want to be clear to what this asks for, because I  
19 think the claim being made is, well, your Honor, we ended  
20 up getting a bunch of these emails anyway, we had 5,000 or  
21 however many there were, there is no question we were  
22 entitled to those. That's not what we're asking for.

23 We're asking for documents from this disk.  
24 This disk, inclusive of what we contend are privileged  
25 communications and ---

1 THE COURT: Do you have a copy of the disk?

2 MR. VITALE: The copy is -- there is a copy  
3 of the disk under seal with Judge Hafele, and Mr. Link  
4 sent us a jump drive of the disk that I believe my office  
5 still has possession of, but I would need to confirm that.

6 MR. LINK: May I answer the question for the  
7 Court?

8 THE COURT: Yes.

9 MR. LINK: Scott Link, your Honor.

10 We provided them, once they raised -- once  
11 Brad Edwards' team of lawyers raised the issue, that they  
12 thought there were privileged documents on that disk, we  
13 immediately made a copy of the disk and sent it to them.

14 So they, in fact, are the only ones that  
15 have access to the disk. Judge Hafele, Judge Hafele had  
16 us seal the disk, which we did, and then there is an  
17 original in a box in my office, which pursuant to the  
18 Court's order sits in that box. Fowler White does not  
19 have a copy of the disk any more.

20 MR. VITALE: We have a junk drive copy. Who  
21 has the original disk, is that in a box in your office,  
22 sealed?

23 MR. LINK: There are two disks.

24 MR. VITALE: Okay.

25 MR. LINK: Two disks, one sealed with the

1 state court, and one that sits in a box in my office.

2 MR. VITALE: Sealed?

3 MR. LINK: Exactly as it came to me,  
4 correct.

5 So they have ---

6 MR. VITALE: We have the documents,  
7 your Honor. What I don't have -- this is not about the --  
8 this is not just about the copy that we received to show  
9 us what was on the disk. This is about the subject disk  
10 itself to determine chain of custody, and I think that  
11 goes to Mr. McLachlan's point earlier, which was also  
12 raised in his motion for protective order, that they would  
13 like an IT expert to examine the disk in question, to  
14 determine whether any chain of custody issues can be  
15 resolved, for instance, who opened the disk, who opened  
16 documents on the disk, whether an IT forensic expert can  
17 make that determination. We don't object to that request,  
18 subject to our ability to potentially hire our own  
19 competing expert, but the issue of the chain of custody of  
20 the disk is obviously highly relevant to the show cause  
21 hearing coming up on October 26th.

22 THE COURT: Response.

23 MR. McLACHLAN: Thank you, Judge.

24 As I've already indicated, and as I've  
25 indicated to counsel, there are no emails or documents

1 related to privileged information on the disk, but that's  
2 not what they're asking for, and then don't -- I think the  
3 Court understands, but I'm going to point it out one more  
4 time, it's not in our request, all communications relating  
5 to any information derived from documents or data on the  
6 disk, 21,000-plus unprivileged emails. There are about  
7 6,400 emails which remain on the amended privilege log.

8           So, if the request said documents or data  
9 relating to the disk or any privileged information on the  
10 disk, that would be somewhat more manageable, and it's  
11 going to be a pretty limited production, from what I  
12 understand.

13           There is another issue that I just saw  
14 raised in Mr. Link's response, and he says that the  
15 Razorback documents are similar to the Fowler White  
16 documents -- I mean, the documents on the disk, but we  
17 don't know that to be the case, whether or not it is, but  
18 we do know that Razorback produced documents to Fowler  
19 White, and so it's -- I mean, if it was production of  
20 documents reflecting communications concerning the  
21 privileged materials on the disk, or the custody of the  
22 disk itself, that would be more manageable, but what  
23 they're asking for -- yes, Judge.

24           THE COURT: On the motion for protective  
25 order and the response thereto, I'm going to grant the

1 motion for protective order without prejudice to future  
2 discovery request of a specific nature, more specific  
3 nature. Mr. McLachlan, see to a simple order.

4 MR. McLACHLAN: Thank you, Judge.

5 THE COURT: Thank you. That concludes on  
6 Rothstein Rosenfeldt & Adler.

7 MR. LINK: Your Honor, thank you very much  
8 time for your time today.

9 MR. VITALE: Thank you, your Honor.

10 MR. PUGATCH: Thank you, Judge.

11 MR. McLACHLAN: Thank you, Judge. Have a  
12 great day.

13 MR. LINK: And Court personnel as well,  
14 thank you.

15 MR. CASSELL: Thank you, your Honor.

16 ECRO: CourtCall, we'll disconnect.

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20 (Thereupon, the hearing was concluded.)  
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**CERTIFICATION**

**STATE OF FLORIDA :  
COUNTY OF MIAMI-DADE :**

I, Cheryl L. Jenkins, RPR, RMR, Shorthand Reporter and Notary Public in and for the State of Florida at Large, do hereby certify that the foregoing proceedings were transcribed by me from a digital recording held on the date and from the place as stated in the caption hereto on Page 1 to the best of my ability.

WITNESS my hand this 14th day of October, 2018.

\_\_\_\_\_

**CHERYL L. JENKINS, RPR, RMR**  
**Court Reporter and Notary Public**  
**in and for the State of Florida at Large**  
**Commission #GG 138863**  
**December 27, 2021**