

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT

JEFFREY EPSTEIN,

Petitioner,

CASE NO. 4D18-0762

-vs-

SCOTT ROTHSTEIN,
individually, BRADLEY J.
EDWARDS, individually, and
L.M., E.W., and JANE DOE,
Intervenors.

Respondents

APPENDIX TO RESPONSE TO PETITION FOR WRIT OF MANDAMUS

	<u>PAGE</u>
1. Non-Prosecution Agreement, dated September 24, 2007	A4-17
2. Notice of Appearance, dated November 1, 2017	A18-20
3. Motion for Continuance, dated November 6, 2017	A21-33
4. Defendant Rothstein's Motion to Set Aside Default, dated February 17, 2010	A34-36

Attorneys filing appendix:
Philip M. Burlington, Esq.
Nichole J. Segal, Esq.
BURLINGTON & ROCKENBACH, P.A.
444 West Railroad Avenue, Suite 350
West Palm Beach, FL 33401

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing was furnished by mail to The Honorable Donald W. Hafele, 205 N. Dixie Highway, Room 10.1216, West Palm Beach, FL 33401 and to all counsel on the attached service list, by email, on March 12, 2018.

Jack Scarola, Esq.
Karen Terry, Esq.
David J. Vitale, Jr. Esq.
SEARCY DENNY SCAROLA
BARNHART & SHIPLEY, P.A.
2139 Palm Beach Lakes Blvd.
West Palm Beach, FL 33409

[REDACTED]

and

BURLINGTON & ROCKENBACH, P.A.
Courthouse Commons/Suite 350
444 West Railroad Avenue
West Palm Beach, FL 33401
(561) 721-0400
Attorneys for Respondents

[REDACTED]

By: /s/ Philip M. Burlington
PHILIP M. BURLINGTON
Florida Bar No. 285862

By: /s/ Nichole J. Segal
NICHOLE J. SEGAL
Florida Bar No. 41232

/kbt

SERVICE LIST

Epstein v. Rothstein/Edwards

Case No. 4D18-0762

Scott J. Link, Esq.
Kara Berard Rockenbach, Esq.
Rachel J. Glasser, Esq.
LINK & ROCKENBACH, PA
1555 Palm Beach Lakes Blvd. Ste. 301
West Palm Beach, Florida 33401



Attorneys for Jeffrey Epstein

Marc S. Nurik, Esq.
LAW OFFICES OF MARC S. NURIK
One E. Broward Boulevard, Ste. 700
Ft. Lauderdale, FL 33301



Attorneys for Scott Rothstein

Bradley J. Edwards, Esq.
EDWARDS POTTINGER LLC
425 N. Andrews Avenue, Ste. 2
Ft. Lauderdale, FL 33301-3268



Attorneys for Bradley J. Edwards

Jack A. Goldberger, Esq.
ATTERBURY, GOLDBERGER
& WEISS, P.A.
250 Australian Avenue S., Ste. 1400
West Palm Beach, FL 33401



Attorneys for Jeffrey Epstein

Place in file

**IN RE:
INVESTIGATION OF
JEFFREY EPSTEIN**

NON-PROSECUTION AGREEMENT

IT APPEARING that the City of Palm Beach Police Department and the State Attorney's Office for the 15th Judicial Circuit in and for Palm Beach County (hereinafter, the "State Attorney's Office") have conducted an investigation into the conduct of Jeffrey Epstein (hereinafter "Epstein");

IT APPEARING that the State Attorney's Office has charged Epstein by indictment with solicitation of prostitution, in violation of Florida Statutes Section 796.07;

IT APPEARING that the United States Attorney's Office and the Federal Bureau of Investigation have conducted their own investigation into Epstein's background and any offenses that may have been committed by Epstein against the United States from in or around 2001 through in or around September 2007, including:

- (1) knowingly and willfully conspiring with others known and unknown to commit an offense against the United States, that is, to use a facility or means of interstate or foreign commerce to knowingly persuade, induce, or entice minor females to engage in prostitution, in violation of Title 18, United States Code, Section 2422(b); all in violation of Title 18, United States Code, Section 371;
- (2) knowingly and willfully conspiring with others known and unknown to travel in interstate commerce for the purpose of engaging in illicit sexual conduct, as defined in 18 U.S.C. § 2423(f), with minor females, in violation of Title 18, United States Code, Section 2423(b); all in violation of Title 18, United States Code, Section 2423(e);
- (3) using a facility or means of interstate or foreign commerce to knowingly persuade, induce, or entice minor females to engage in prostitution; in violation of Title 18, United States Code, Sections 2422(b) and 2;
- (4) traveling in interstate commerce for the purpose of engaging in illicit sexual conduct, as defined in 18 U.S.C. § 2423(f), with minor females; in violation

of Title 18, United States Code, Section 2423(b); and

- (5) knowingly, in and affecting interstate and foreign commerce, recruiting, enticing, and obtaining by any means a person, knowing that the person had not attained the age of 18 years and would be caused to engage in a commercial sex act as defined in 18 U.S.C. § 1591(c)(1); in violation of Title 18, United States Code, Sections 1591(a)(1) and 2; and

IT APPEARING that Epstein seeks to resolve globally his state and federal criminal liability and Epstein understands and acknowledges that, in exchange for the benefits provided by this agreement, he agrees to comply with its terms, including undertaking certain actions with the State Attorney's Office;

IT APPEARING, after an investigation of the offenses and Epstein's background by both State and Federal law enforcement agencies, and after due consultation with the State Attorney's Office, that the interests of the United States, the State of Florida, and the Defendant will be served by the following procedure;

THEREFORE, on the authority of R. Alexander Acosta, United States Attorney for the Southern District of Florida, prosecution in this District for these offenses shall be deferred in favor of prosecution by the State of Florida, provided that Epstein abides by the following conditions and the requirements of this Agreement set forth below.

If the United States Attorney should determine, based on reliable evidence, that, during the period of the Agreement, Epstein willfully violated any of the conditions of this Agreement, then the United States Attorney may, within ninety (90) days following the expiration of the term of home confinement discussed below, provide Epstein with timely notice specifying the condition(s) of the Agreement that he has violated, and shall initiate its prosecution on any offense within sixty (60) days' of giving notice of the violation. Any notice provided to Epstein pursuant to this paragraph shall be provided within 60 days of the United States learning of facts which may provide a basis for a determination of a breach of the Agreement.

After timely fulfilling all the terms and conditions of the Agreement, no prosecution for the offenses set out on pages 1 and 2 of this Agreement, nor any other offenses that have been the subject of the joint investigation by the Federal Bureau of Investigation and the United States Attorney's Office, nor any offenses that arose from the Federal Grand Jury investigation will be instituted in this District, and the charges against Epstein if any, will be dismissed.

Terms of the Agreement:

1. Epstein shall plead guilty (not nolo contendere) to the Indictment as currently pending against him in the 15th Judicial Circuit in and for Palm Beach County (Case No. 2006-cf-009495AXXXMB) charging one (1) count of solicitation of prostitution, in violation of Fl. Stat. § 796.07. In addition, Epstein shall plead guilty to an Information filed by the State Attorney's Office charging Epstein with an offense that requires him to register as a sex offender, that is, the solicitation of minors to engage in prostitution, in violation of Florida Statutes Section 796.03;
2. Epstein shall make a binding recommendation that the Court impose a thirty (30) month sentence to be divided as follows:
 - (a) Epstein shall be sentenced to consecutive terms of twelve (12) months and six (6) months in county jail for all charges, without any opportunity for withholding adjudication or sentencing, and without probation or community control in lieu of imprisonment; and
 - (b) Epstein shall be sentenced to a term of twelve (12) months of community control consecutive to his two terms in county jail as described in Term 2(a), *supra*.
3. This agreement is contingent upon a Judge of the 15th Judicial Circuit accepting and executing the sentence agreed upon between the State Attorney's Office and Epstein, the details of which are set forth in this agreement.
4. The terms contained in paragraphs 1 and 2, *supra*, do not foreclose Epstein and the State Attorney's Office from agreeing to recommend any additional charge(s) or any additional term(s) of probation and/or incarceration.
5. Epstein shall waive all challenges to the Information filed by the State Attorney's Office and shall waive the right to appeal his conviction and sentence, except a sentence that exceeds what is set forth in paragraph (2), *supra*.
6. Epstein shall provide to the U.S. Attorney's Office copies of all

proposed agreements with the State Attorney's Office prior to entering into those agreements.

7. The United States shall provide Epstein's attorneys with a list of individuals whom it has identified as victims, as defined in 18 U.S.C. § 2255, after Epstein has signed this agreement and been sentenced. Upon the execution of this agreement, the United States, in consultation with and subject to the good faith approval of Epstein's counsel, shall select an attorney representative for these persons, who shall be paid for by Epstein. Epstein's counsel may contact the identified individuals through that representative.
8. If any of the individuals referred to in paragraph (7), *supra*, elects to file suit pursuant to 18 U.S.C. § 2255, Epstein will not contest the jurisdiction of the United States District Court for the Southern District of Florida over his person and/or the subject matter, and Epstein waives his right to contest liability and also waives his right to contest damages up to an amount as agreed to between the identified individual and Epstein, so long as the identified individual elects to proceed exclusively under 18 U.S.C. § 2255, and agrees to waive any other claim for damages, whether pursuant to state, federal, or common law. Notwithstanding this waiver, as to those individuals whose names appear on the list provided by the United States, Epstein's signature on this agreement, his waivers and failures to contest liability and such damages in any suit are not to be construed as an admission of any criminal or civil liability.
9. Epstein's signature on this agreement also is not to be construed as an admission of civil or criminal liability or a waiver of any jurisdictional or other defense as to any person whose name does not appear on the list provided by the United States.
10. Except as to those individuals who elect to proceed exclusively under 18 U.S.C. § 2255, as set forth in paragraph (8), *supra*, neither Epstein's signature on this agreement, nor its terms, nor any resulting waivers or settlements by Epstein are to be construed as admissions or evidence of civil or criminal liability or a waiver of any jurisdictional or other defense as to any person, whether or not her name appears on the list provided by the United States.
11. Epstein shall use his best efforts to enter his guilty plea and be

sentenced not later than October 26, 2007. The United States has no objection to Epstein self-reporting to begin serving his sentence not later than January 4, 2008.

12. Epstein agrees that he will not be afforded any benefits with respect to gain time, other than the rights, opportunities, and benefits as any other inmate, including but not limited to, eligibility for gain time credit based on standard rules and regulations that apply in the State of Florida. At the United States' request, Epstein agrees to provide an accounting of the gain time he earned during his period of incarceration.
13. The parties anticipate that this agreement will not be made part of any public record. If the United States receives a Freedom of Information Act request or any compulsory process commanding the disclosure of the agreement, it will provide notice to Epstein before making that disclosure.

Epstein understands that the United States Attorney has no authority to require the State Attorney's Office to abide by any terms of this agreement. Epstein understands that it is his obligation to undertake discussions with the State Attorney's Office and to use his best efforts to ensure compliance with these procedures, which compliance will be necessary to satisfy the United States' interest. Epstein also understands that it is his obligation to use his best efforts to convince the Judge of the 15th Judicial Circuit to accept Epstein's binding recommendation regarding the sentence to be imposed, and understands that the failure to do so will be a breach of the agreement.

In consideration of Epstein's agreement to plead guilty and to provide compensation in the manner described above, if Epstein successfully fulfills all of the terms and conditions of this agreement, the United States also agrees that it will not institute any criminal charges against any potential co-conspirators of Epstein, including but not limited to [REDACTED], [REDACTED], Lesley Groff, or [REDACTED]. Further, upon execution of this agreement and a plea agreement with the State Attorney's Office, the federal Grand Jury investigation will be suspended, and all pending federal Grand Jury subpoenas will be held in abeyance unless and until the defendant violates any term of this agreement. The defendant likewise agrees to withdraw his pending motion to intervene and to quash certain grand jury subpoenas. Both parties agree to maintain their evidence, specifically evidence requested by or directly related to the grand jury subpoenas that have been issued, and including certain computer equipment, inviolate until all of the terms of this agreement have been satisfied. Upon the successful completion of the terms of this agreement, all outstanding grand jury subpoenas shall be deemed withdrawn.

By signing this agreement, Epstein asserts and certifies that each of these terms is material to this agreement and is supported by independent consideration and that a breach of any one of these conditions allows the United States to elect to terminate the agreement and to investigate and prosecute Epstein and any other individual or entity for any and all federal offenses.

By signing this agreement, Epstein asserts and certifies that he is aware of the fact that the Sixth Amendment to the Constitution of the United States provides that in all criminal prosecutions the accused shall enjoy the right to a speedy and public trial. Epstein further is aware that Rule 48(b) of the Federal Rules of Criminal Procedure provides that the Court may dismiss an indictment, information, or complaint for unnecessary delay in presenting a charge to the Grand Jury, filing an information, or in bringing a defendant to trial. Epstein hereby requests that the United States Attorney for the Southern District of Florida defer such prosecution. Epstein agrees and consents that any delay from the date of this Agreement to the date of initiation of prosecution, as provided for in the terms expressed herein, shall be deemed to be a necessary delay at his own request, and he hereby waives any defense to such prosecution on the ground that such delay operated to deny him rights under Rule 48(b) of the Federal Rules of Criminal Procedure and the Sixth Amendment to the Constitution of the United States to a speedy trial or to bar the prosecution by reason of the running of the statute of limitations for a period of months equal to the period between the signing of this agreement and the breach of this agreement as to those offenses that were the subject of the grand jury's investigation. Epstein further asserts and certifies that he understands that the Fifth Amendment and Rule 7(a) of the Federal Rules of Criminal Procedure provide that all felonies must be charged in an indictment presented to a grand jury. Epstein hereby agrees and consents that, if a prosecution against him is instituted for any offense that was the subject of the grand jury's investigation, it may be by way of an Information signed and filed by the United States Attorney, and hereby waives his right to be indicted by a grand jury as to any such offense.

///

///

///

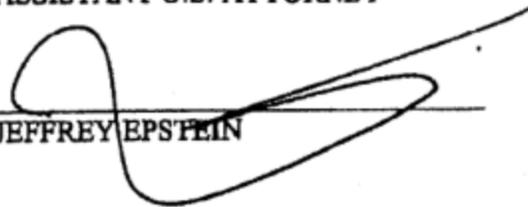
By signing this agreement, Epstein asserts and certifies that the above has been read and explained to him. Epstein hereby states that he understands the conditions of this Non-Prosecution Agreement and agrees to comply with them.

R. ALEXANDER ACOSTA
UNITED STATES ATTORNEY

Dated: _____

By: _____
A. MARIE VILLAFANA
ASSISTANT U.S. ATTORNEY

Dated: 8/24/07



JEFFREY EPSTEIN

Dated: _____

GERALD LEFCOURT, ESQ.
COUNSEL TO JEFFREY EPSTEIN

Dated: _____

LILLY ANN SANCHEZ, ESQ.
ATTORNEY FOR JEFFREY EPSTEIN

By signing this agreement, Epstein asserts and certifies that the above has been read and explained to him. Epstein hereby states that he understands the conditions of this Non-Prosecution Agreement and agrees to comply with them.

R. ALEXANDER ACOSTA
UNITED STATES ATTORNEY

Dated: _____

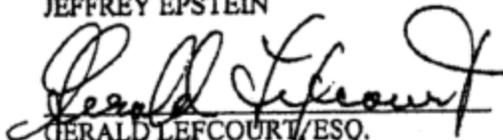
By:

A. MARIE VILLAFANA
ASSISTANT U.S. ATTORNEY

Dated: _____

JEFFREY EPSTEIN

Dated: 9/24/07



GERALD LEFCOURT, ESQ.
COUNSEL TO JEFFREY EPSTEIN

Dated: _____

LILLY ANN SANCHEZ, ESQ.
ATTORNEY FOR JEFFREY EPSTEIN

By signing this agreement, Epstein asserts and certifies that the above has been read and explained to him. Epstein hereby states that he understands the conditions of this Non-Prosecution Agreement and agrees to comply with them.

R. ALEXANDER ACOSTA
UNITED STATES ATTORNEY

Dated: _____

By:

A. MARIE VILLAFANA
ASSISTANT U.S. ATTORNEY

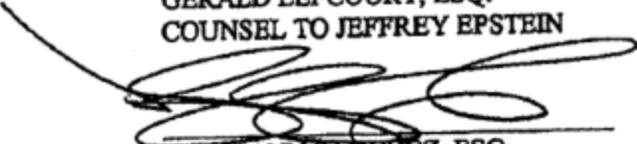
Dated: _____

JEFFREY EPSTEIN

Dated: _____

GERALD LEFCOURT, ESQ.
COUNSEL TO JEFFREY EPSTEIN

Dated: 9-24-07



LILLY ANN SANCHEZ, ESQ.
ATTORNEY FOR JEFFREY EPSTEIN

IN RE:
INVESTIGATION OF
JEFFREY EPSTEIN

ADDENDUM TO THE NON-PROSECUTION AGREEMENT

IT APPEARING that the parties seek to clarify certain provisions of page 4, paragraph 7 of the Non-Prosecution Agreement (hereinafter "paragraph 7"), that agreement is modified as follows:

- 7A. The United States has the right to assign to an independent third-party the responsibility for consulting with and, subject to the good faith approval of Epstein's counsel, selecting the attorney representative for the individuals identified under the Agreement. If the United States elects to assign this responsibility to an independent third-party, both the United States and Epstein retain the right to make good faith objections to the attorney representative suggested by the independent third-party prior to the final designation of the attorney representative.
- 7B. The parties will jointly prepare a short written submission to the independent third-party regarding the role of the attorney representative and regarding Epstein's Agreement to pay such attorney representative his or her regular customary hourly rate for representing such victims subject to the provisions of paragraph C, infra.
- 7C. Pursuant to additional paragraph 7A, Epstein has agreed to pay the fees of the attorney representative selected by the independent third party. This provision, however, shall not obligate Epstein to pay the fees and costs of contested litigation filed against him. Thus, if after consideration of potential settlements, an attorney representative elects to file a contested lawsuit pursuant to 18 U.S.C. s 2255 or elects to pursue any other contested remedy, the paragraph 7 obligation of the Agreement to pay the costs of the attorney representative, as opposed to any statutory or other obligations to pay reasonable attorneys fees and costs such as those contained in s 2255 to bear the costs of the attorney representative, shall cease.

By signing this Addendum, Epstein asserts and certifies that the above has been read and explained to him. Epstein hereby states that he understands the clarifications to the Non-Prosecution Agreement and agrees to comply with them.

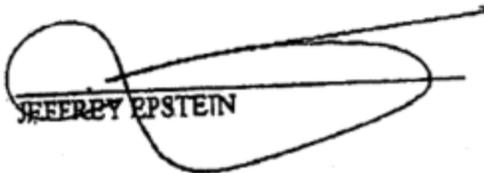
R. ALEXANDER ACOSTA
UNITED STATES ATTORNEY

Dated: _____

By:

A. MARIE VILLAPANA
ASSISTANT U.S. ATTORNEY

Dated: 1/29/07



JEFFREY EPSTEIN

Dated: _____

GERALD LEFCOURT, ESQ.
COUNSEL TO JEFFREY EPSTEIN

Dated: _____

LILLY ANN SANCHEZ, ESQ.
ATTORNEY FOR JEFFREY EPSTEIN

By signing this Addendum, Epstein asserts and certifies that the above has been read and explained to him. Epstein hereby states that he understands the clarifications to the Non-Prosecution Agreement and agrees to comply with them.

R. ALEXANDER ACOSTA
UNITED STATES ATTORNEY

Dated: _____

By: _____
A. MARIE VILLAFANA
ASSISTANT U.S. ATTORNEY

Dated: _____

JEFFREY EPSTEIN

Dated: 10/29/07



GERALD LEFCOURT, ESQ.
COUNSEL TO JEFFREY EPSTEIN

Dated: _____

LILLY ANN SANCHEZ, ESQ.
ATTORNEY FOR JEFFREY EPSTEIN

By signing this Addendum, Epstein asserts and certifies that the above has been read and explained to him. Epstein hereby states that he understands the clarifications to the Non-Prosecution Agreement and agrees to comply with them.

R. ALEXANDER ACOSTA
UNITED STATES ATTORNEY

Dated: _____

By: _____
A. MARIE VILLAFANA
ASSISTANT U.S. ATTORNEY

Dated: _____

JEFFREY EPSTEIN

Dated: _____

GERALD LEFCOURT, ESQ.
COUNSEL TO JEFFREY EPSTEIN

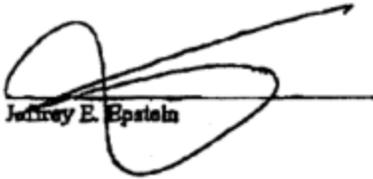
Dated: 10-29-07



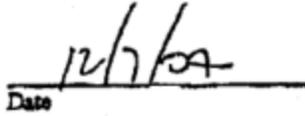
LILLY ANN SANCHEZ, ESQ.
ATTORNEY FOR JEFFREY EPSTEIN

Affirmation

I, Jeffrey E. Epstein do hereby re-affirm the Non-Prosecution Agreement and Addendum to same dated October 30, 2007.



Jeffrey E. Epstein



Date

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

Case No. 50-2009CA040800XXXXMBAG

JEFFREY EPSTEIN,

Plaintiff/Counter-Defendant,

v.

SCOTT ROTHSTEIN, individually, and
BRADLEY J. EDWARDS, individually,

Defendants/Counter-Plaintiffs.

**PLAINTIFF/COUNTER-DEFENDANT'S NOTICE OF APPEARANCE
OF CO-COUNSEL, E-MAIL DESIGNATIONS AND DIRECTIONS TO THE
CLERK TO UPDATE ATTORNEY INFORMATION**

Plaintiff/Counter-Defendant, Jeffrey Epstein, hereby gives notice of the appearance of his co-counsel at Link & Rockenbach, P.A. Please direct all pleadings, discovery and orders in this matter to the following counsel:

Scott J. Link
Link & Rockenbach, P.A.
1555 Palm Beach Lakes Boulevard, Suite 301
West Palm Beach, Florida 33401
Telephone: [REDACTED]
Facsimile: [REDACTED]
Primary: [REDACTED]
Secondary: [REDACTED]

CERTIFICATE OF SERVICE

I certify that the foregoing document has been furnished to the attorneys listed on the Service List below on November 1, 2017, through the Court's e-filing portal pursuant to Florida Rule of Judicial Administration 2.516(b)(1).

LINK & ROCKENBACH, P.A.
1555 Palm Beach Lakes Boulevard, Suite 301
West Palm Beach, Florida 33401
[redacted]; [redacted] [fax]

By: /s/ Scott J. Link
Scott J. Link (FBN 602991)
Primary: [redacted]
Secondary: [redacted]

*Co-Counsel for Plaintiff/Counter-Defendant
Jeffrey Epstein*

SERVICE LIST

<p>Jack Scarola Searcy, Denny, Scarola, Barnhart & Shipley, P.A. 2139 Palm Beach Lakes Boulevard West Palm Beach, FL 33409 [redacted] [redacted] <i>Counter-Plaintiff</i> <i>Bradley J. Edwards</i></p>	<p>Nichole J. Segal Burlington & Rockenbach, P.A. Courthouse Commons, Suite 350 444 West Railroad Avenue West Palm Beach, FL 33401 [redacted] <i>Co-Counsel for Defendant/Counter-Plaintiff</i> <i>Bradley J. Edwards</i></p>
<p>Bradley J. Edwards Farmer, Jaffee, Weissing, Edwards, Fistos & Lehrman, P.L. 425 N. Andrews Avenue, Suite 2 Fort Lauderdale, FL 33401 [redacted] <i>Co-Counsel for Defendant/Counter-Plaintiff</i> <i>Bradley J. Edwards</i></p>	<p>Marc S. Nurik Law Offices of Marc S. Nurik One E. Broward Boulevard, Suite 700 Ft. Lauderdale, FL 33301 [redacted] <i>Counsel for Defendant Scott Rothstein</i></p>

<p>Tonja Haddad Coleman 315 S.E. Seventh Street, Suite 301 Ft. Lauderdale, FL 33301 [REDACTED]</p> <p><i>Co-Counsel for Plaintiff/Counter-Defendant Jeffrey Epstein</i></p>	<p>Fred Haddad Haddad & Navarro, PLLC 1 Financial Plaza, Suite 2612 Fort Lauderdale, FL 33394 [REDACTED]</p> <p><i>Co-Counsel for Plaintiff/Counter-Defendant Jeffrey Epstein</i></p>
<p>W. Chester Brewer, Jr. W. Chester Brewer, Jr. P.A. 250 Australian Avenue S., Suite 1400 West Palm Beach, FL 33401 [REDACTED]</p> <p><i>Co-Counsel for Plaintiff/Counter-Defendant Jeffrey Epstein</i></p>	<p>Jack A. Goldberger Atterbury, Goldberger & Weiss, P.A. 250 Australian Avenue S., Suite 1400 West Palm Beach, FL 33401 [REDACTED]</p> <p><i>Co-Counsel for Plaintiff/Counter-Defendant Jeffrey Epstein</i></p>

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

Case No. 50-2009CA040800XXXXMBAG

JEFFREY EPSTEIN,

Plaintiff/Counter-Defendant,

v.

SCOTT ROTHSTEIN, individually, and
BRADLEY J. EDWARDS, individually,

Defendants/Counter-Plaintiff.

**PLAINTIFF/COUNTER-DEFENDANT'S MOTION FOR CONTINUANCE OF TRIAL
AND TO EXTEND PRE-TRIAL DEADLINES OR, IN THE ALTERNATIVE,
BIFURCATION OF TRIAL**¹

Plaintiff/Counter-Defendant Jeffrey Epstein ("Plaintiff") moves under Rule 1.460 of the Florida Rules of Civil Procedure for a brief 90-day continuance of the special set 10-day trial commencing on December 5, 2017, and to extend the pre-trial deadlines. In the alternative, Plaintiff moves under Rule 1.270 of the Florida Rules of Civil Procedure to bifurcate the trial and limit the first stage of the proceedings to: (i) Plaintiff's case and damages against Defendant Scott Rothstein and (ii) the absence of probable cause element of Defendant/Counter-Plaintiff Bradley J. Edwards' ("Defendant") malicious prosecution claim.

BACKGROUND

Although this case has been pending since December 2009, in May 2014, this Court granted final summary judgment in Plaintiff's favor. Defendant appealed, and the Fourth District

¹ Counsel for Plaintiff has contacted counsel for Defendant, who opposes this Motion.

Court of Appeal reversed and remanded in November 2015, with the Mandate issuing in December 2015. The matter was sent to the Florida Supreme Court and, in large part, there were no substantive filings in this case until June 2017, after the Supreme Court declined jurisdiction. Defendant noticed this matter for trial shortly before the Supreme Court's decision and, in July 2017, the Court entered its trial order, special setting a ten-day trial less than five months away.

INTRODUCTION

The trial should focus on a handful of narrow issues: (1) Plaintiff's damages caused by Rothstein's² criminal conspiracy; (2) whether Defendant can prove that Plaintiff never had probable cause -- both at the inception of filing suit and throughout the proceeding -- to allege Defendant's connection to Rothstein's criminal activities; (3) whether the proceeding against Defendant concluded with a bona fide termination in his favor; (4) whether Defendant can prove that Plaintiff acted with malice; and (5) whether Defendant was damaged.

First, Defendant must have changed his mind about the relevancy of printed or published media about him associating his name with Plaintiff's because, despite an "irrelevant" objection to an interrogatory served in September 2017, Defendant, one month later in October 2017, disclosed a damages expert that focuses on just this type of publication damage. This expert disclosure, changing Defendant's position regarding the discovery sought by Plaintiff from "irrelevant" to "highly relevant," requires that Plaintiff have an opportunity to obtain answers to the discovery Defendant refused to answer, take the deposition of Defendant's expert, obtain a rebuttal expert, and review the claim that more than nine million people read Plaintiff's allegations against Defendant in more than 100 news articles. Florida courts do not condone, nor does Plaintiff believe Defendant's counsel intended, trial by ambush. A brief continuance allows for Defendant

² The Clerk of this Court entered a default against Rothstein on January 21, 2010.

to amend the discovery answers and Plaintiff to conduct the necessary discovery as to the new damages claim.

Second, it has become clear that Defendant has no intention of litigating the five simple issues listed above. Instead, he intends to re-litigate each of his clients' cases (and other alleged victims' cases) against Plaintiff; return to his prosecutor days and try a criminal case, distracting the jury with inflammatory allegations of sexual misconduct that have nothing to do with the elements of his malicious prosecution claim. The Court should not allow mini-trials of matters that have been concluded or are irrelevant within this one. (*See generally* Plaintiff's Motion in Limine.) If the Court allows Defendant to pursue this trial strategy, then Plaintiff either needs more time to prepare for trial or the trial should be bifurcated in the manner Plaintiff proposes.

PLAINTIFF HEARD THIS COURT LOUD AND CLEAR

Following the Court's clear and unambiguous advice at the October 3, 2017, hearing to fortify lead counsel in the preparation and defense of his claim, on October 13, 2017, Plaintiff retained new trial counsel, who appeared in the case on November 1, 2017. Plaintiff also retained a team of lawyers from the Gunster law firm as trial support. None of the things Plaintiff is asking for in this Motion is based on lack of manpower. Even using all of these resources, there is still not enough time to get everything that is needed done before the December 5, 2017, trial date. Importantly, Plaintiff and his trial counsel will not seek another continuance. We will be ready to try the case in 90 days.

ARGUMENT

I. PLAINTIFF NEEDS ADDITIONAL TIME TO PREPARE FOR TRIAL DUE TO EVENTS OUTSIDE OF HIS CONTROL.

There are several important tasks that must be addressed before trial. First, Plaintiff needs to identify and hire an expert to address the extent to which Plaintiff's allegations damaged

Defendant's reputation and the testimony of Defendant's newly disclosed expert who will be testifying on this subject. Second, counsel need to interview the attorney who filed the initial Complaint on Plaintiff's behalf and review his files. Third, Defendant claims he may call more than 150 witnesses at trial, but only a handful of those witnesses have been deposed, and Plaintiff's counsel need time to ask the Court to have Defendant identify the witnesses who will actually be called at trial so Plaintiff can determine if their depositions are necessary, and to conduct the depositions. Fourth, Defendant has, to date, not produced crucial evidence subject to Plaintiff's Motion to Compel and Plaintiff's counsel cannot properly prepare for trial until the Court rules. For example, Defendant has only disclosed the anticipated testimony of 21 of the 159 witnesses he identified on his Witness List and provided incomplete contact information (i.e., he only provided physical addresses, not e-mail addresses or telephone numbers). In addition, Defendant has not provided relevant and important information about his damage claim and relevant information about his expert's recently provided report. As will be explained in Plaintiff's Supplemental Motion to Compel, this information and the documentation are necessary to defend against Defendant's Fourth Amended Counterclaim. Finally, substantive motions, which will direct the path the trial will take, need to be resolved by the Court, but the hearing on those motions is currently set only a few days before the trial is to commence. It is difficult for Plaintiff to properly prepare for trial without knowing which case will be tried.

Generally, a motion for continuance has three requirements: it must be in writing, it must be signed by the movant, and it must state all of the facts that entitle the movant to a continuance. Fla. R. Civ. P. 1.460. *See also* Fla. R. Jud. Admin. 2.545(e) ("Continuances should be few, good cause should be required, and all requests should be heard and resolved by a judge."). This motion

satisfies these requirements and Plaintiff has made this request in good faith. The Court should grant the motion in the interest of justice.

a. Experts

Throughout the pendency of this litigation, Plaintiff has served multiple discovery requests to determine how Defendant's reputation was damaged and how he suffered monetarily. On October 20, 2017, Defendant served his expert's untimely report³ which revealed that Defendant's expert relies on the same type of documents Defendant early claimed were "irrelevant." Because of this new development, Plaintiff needs to obtain the discovery Defendant objected to as irrelevant, retain a rebuttal expert witness and have the expert prepare a report.

Specifically, in interrogatories, Plaintiff asked Defendant about his use of Plaintiff's name to promote his practice and the evidence Defendant intended to rely on to prove damage to his reputation. Defendant responded that the requests were "irrelevant":

34. Please describe in detail and identify with specificity every social media outlet, website, blog, printed materials, seminar materials, or any other printed or published media on which you, your law firm, or any association with which you are affiliated has ever advertised, references, or otherwise places the name of Jeffrey Epstein, and include a detailed description and the date(s) of each and every such reference, advertisement, placement, publication, dissemination, or promotion, identify the persons or groups of persons to whom the same was made, and state the locations where made, and state whether or not the materials used in connection with such reference, advertisement, placement, publication, dissemination, or promotion are in your possession or control, or are

³ Pursuant to the Court's July 20, 2017, Order Specially Setting Jury Trial, the parties were required to disclose 60 days prior to trial (i.e., by October 6, 2017) expert witnesses along with (1) the subject matter about which the expert is expected to testify; (2) the substance of the facts and opinions to which the expert is expected to testify; (3) a summary of the grounds for each opinion; (4) a copy of any written report; and (5) the expert's curriculum vitae. Defendant, however, did not provide his expert's report to Plaintiff until October 20, 2017 – two-weeks after the deadline to do so.

still available on line or in print, and identify the persons or website from whom such materials may be obtained.

RESPONSE: Objection: The information sought is not relevant, material or reasonably calculated to lead to the discovery of admissible evidence. . . .

35. Please describe with particularity any and all evidence, circumstances and events upon which you rely in asserting that your reputation was damaged as alleged in your Counterclaim, including, without limitation, specifically describing how that damage is attributable to Epstein's lawsuit against you.

RESPONSE: The allegations of Epstein's maliciously filed Complaint are defamatory per se.

Plaintiff's Interrogatories dated September 5, 2017, and Defendant's Responses dated September 25, 2017, Nos. 34 and 35.

Just recently, however, Defendant disclosed through his expert that he is relying on this same type of information that he earlier refused to provide:

15. The defaming statements associating Mr. Bradley J. Edwards with the illegal activities of Mr. Scott Rothstein as a result of Mr. Jeffrey Epstein's lawsuit against Mr. Edwards have been disseminated to at least 74 online media or other sites in 104 separate stories or articles with a combined 9,669,542 potential daily visitors since the lawsuit was filed to the date that I filed this report, inclusive.

Dr. Bernard J. Jansen, October 20, 2017, Report, ¶ 15.

Because of this late disclosure and change in position regarding the relevance of printed or published media connecting Defendant to Plaintiff, Plaintiff now needs the discovery Defendant claimed was irrelevant and also must identify and retain an expert to testify about, among other things, the number of people who may have read articles discussing Plaintiff's allegations tying Defendant to Rothstein's Ponzi scheme, and the impact this may or may not have had on Defendant's reputation. The expert will need time to study and investigate Defendant's responses to the previously objected to discovery (which the Court should order be produced forthwith) and

Defendant's expert's analysis, perform his own study, draft his own report, and assist Plaintiff's counsel in preparing to take the deposition of Defendant's expert. Plaintiff's expert's deposition will need to be taken as well. All of this cannot be accomplished in a single month.

b. Plaintiff's Original Counsel

A central focus of this case is what Plaintiff knew at the time the original Complaint was filed and his legitimate basis for bringing this lawsuit. Plaintiff was represented by Robert D. Critton, Jr., at the time the original Complaint was filed. Plaintiff's new trial counsel needs time to review Mr. Critton's files and speak with Mr. Critton to ensure that Plaintiff's case is properly presented to the Court. Unfortunately, Mr. Critton has a heavy case load and has been unable to devote the time necessary to review his files and refresh his recollection before being interviewed. Mr. Critton expects it will be a few weeks before he can devote that time to this matter.

Plaintiff's counsel cannot fairly and adequately present Plaintiff's case without speaking with Mr. Critton, and the continuance should be granted. *Cf. Ziegler v. Klein*, 590 So. 2d 1066, 1067 (Fla. 4th DCA 1991) (“[W]hen undisputed facts reveal that the physical condition of either counsel or client prevents fair and adequate presentation of a case, failure to grant a continuance is reversible error.”).

c. Witnesses

Defendant has identified 159 witnesses on his Sixth Amended Witness List, but only a handful of those witnesses have been deposed. Plaintiff has moved to exclude the testimony of twenty witnesses and one category of witness that Defendant describes as “witnesses expected to be presented.” (Omnibus Motion in Limine at 21–22.) In addition, until the Court determines what case will be tried (i.e., Defendant's malicious prosecution claim or Defendant's “victim” cases), it is premature, a practical impossibility, and a financial burden to both parties to take the

depositions of more than a hundred witnesses. The hearing on these trial issues, however, is not set until November 29, 2017 – just a few days before the trial date. If this Court denies Plaintiff’s motion to exclude the witnesses—despite their lack of firsthand knowledge concerning the elements of Defendant’s malicious prosecution claim and any affirmative defenses Plaintiff may offer—then the Court should order Defendant to identify the witnesses he actually intends to present at trial and grant a continuance so Plaintiff can take their depositions and determine what, if anything, they know regarding the elements of Defendant’s claim. In any event, Plaintiff’s counsel will not have sufficient time from the date of the Court’s ruling to trial to conduct this substantial deposition discovery.

d. Pre-Trial Deadlines

If the continuance is granted, Plaintiff also requests that the current trial deadlines be reset based upon the new trial date, including allowing the parties to file amended Exhibit and Witness Lists and to identify experts.

II. THE COURT SHOULD BIFURCATE THE TRIAL IN THE INTEREST OF EFFICIENCY AND TO MINIMIZE THE RISK OF PREJUDICE TO PLAINTIFF.

Despite these obstacles, Plaintiff could be prepared to proceed to trial as scheduled on December 5, 2017, if the Court bifurcated the proceedings and limited the first stage to: (i) Plaintiff’s case and damages arising from Rothstein’s conspiracy to commit abuse of process and (ii) whether Plaintiff had probable cause to commence these proceedings against Defendant. This Court, “in furtherance of convenience or to avoid prejudice[,] may order a separate trial of . . . any separate issue.” Fla. R. Civ. P. 1.270(b). “[B]ifurcation is generally proper absent a specific threat of inconsistent verdicts or prejudice to a party.” *Johansen v. Vuocolo*, 125 So. 3d 197, 200 (Fla. 4th DCA 2013) (citation and quotation marks omitted).

Bifurcation on the terms proposed by Plaintiff is appropriate here. There is substantial overlap between (i) the facts that Plaintiff will present to explain Rothstein's Ponzi scheme and the damages he incurred as a result of it and (ii) the facts known to Plaintiff when he commenced these proceedings against Defendant, *i.e.*, the facts this Court will consider when it determines whether Defendant has proved Plaintiff lacked probable cause. *See Alamo Rent-A-Car, Inc. v. Mancusi*, 632 So. 2d 1352, 1357 (Fla. 1994) (jury decides disputed issues of fact, but court determines whether those facts establish probable cause) (citation omitted). In all events, the jury will have to determine the dollar amount of Plaintiff's damages caused by Rothstein. And in all events, the jury will have to decide what Plaintiff knew about Rothstein's Ponzi scheme when he commenced these proceedings so the Court can determine whether Plaintiff "had a reasonable belief, based on facts and circumstances known to him, in the validity of his claim." *See Wright v. Yurko*, 446 So. 2d 1162, 1166 (Fla. 5th DCA 1984) (defining probable cause) (citing *Goldstein v. Sabella*, 88 So. 2d 910 (Fla. 1956)).

Bifurcating the trial and first addressing Plaintiff's case and damages against Rothstein and the related issue of what Plaintiff knew when he commenced these proceedings will expedite the resolution of Defendant's malicious prosecution counterclaim, minimize the parties' expenses, and conserve judicial resources. If the Court holds that Plaintiff had probable cause, Defendant cannot win and the case is over. *See Burns v. GCG Beverages, Inc.*, 502 So. 2d 1217, 1218 (Fla. 1986) (malicious prosecution has six required elements, and the absence of any one of them is fatal) (citation omitted). If that happens, the parties will not have wasted time and money preparing for trial on the other elements of Defendant's counterclaim (expenses that would include the fees associated with deposing Defendant's proposed witnesses, since their testimony would no longer

be necessary) and the Court, likewise, will not have devoted time and attention to issues that had no effect on the outcome of the case.

Finally, bifurcation avoids unnecessary prejudice to Plaintiff. Defendant obviously, under the guise of establishing the proceeding against Defendant was brought with malice, intends to re-litigate every part of his clients' (and other victims') claims against Plaintiff. But this evidence is simply not relevant to the narrow issue of whether Plaintiff reasonably believed—based on public information from the government and investors about Rothstein's Ponzi scheme, allegations and news reports that Rothstein had used Defendant's cases against Plaintiff to trick third parties into investing in non-existent settlements, Defendant's abusive use of discovery, and Defendant's commencement of a 159-count lawsuit in federal court, that was never served, when a duplicative case was already pending in state court—that he had a case against Defendant. If the Court allows Defendant to tar Plaintiff with inflammatory allegations of sexual battery before the jury makes its findings about what Plaintiff knew when he filed suit against Defendant, it is likely that the jurors will ignore relevant evidence and find against Plaintiff just because they despise him. Bifurcation of the trial avoids this unnecessary prejudice to Plaintiff and a pure legal action to receive a fair trial.

CONCLUSION

Plaintiff moves this Court to grant his motion for a brief 90-day continuance of the parties' trial date and an extension of the pre-trial deadlines. In the alternative, Plaintiff moves this Court to bifurcate the upcoming trial and limit the first stage of the proceedings to (i) Plaintiff's case and damages against Rothstein and (ii) the absence of probable cause element of Defendant's malicious prosecution claim.

CERTIFICATE OF SERVICE

I certify that the foregoing document has been furnished to the attorneys listed on the Service List below on November 6, 2017, through the Court's e-filing portal pursuant to Florida Rule of Judicial Administration 2.516(b)(1).

LINK & ROCKENBACH, P.A.
1555 Palm Beach Lakes Boulevard, Suite 301
West Palm Beach, Florida 33401
[redacted]; [redacted] [fax]

By: /s/ Scott J. Link
Scott J. Link (FBN 602991)
Kara Berard Rockenbach (FBN 44903)
Angela M. Many (FBN 26680)
Primary: [redacted]
Primary: [redacted]
Primary: [redacted]
Secondary: [redacted]
Secondary: [redacted]
Secondary: [redacted]
Secondary: [redacted]

*Trial Counsel for Plaintiff/Counter-Defendant
Jeffrey Epstein*

SERVICE LIST

<p>Jack Scarola Searcy, Denny, Scarola, Barnhart & Shipley, P.A. 2139 Palm Beach Lakes Boulevard West Palm Beach, FL 33409 [redacted] <i>Co-Counsel for Defendant/Counter-Plaintiff Bradley J. Edwards</i></p>	<p>Nichole J. Segal Burlington & Rockenbach, P.A. Courthouse Commons, Suite 350 444 West Railroad Avenue West Palm Beach, FL 33401 [redacted] <i>Co-Counsel for Defendant/Counter-Plaintiff Bradley J. Edwards</i></p>
--	--

<p>Bradley J. Edwards Farmer, Jaffee, Weissing, Edwards, Fistos & Lehrman, P.L. 425 N. Andrews Avenue, Suite 2 Fort Lauderdale, FL 33401 [REDACTED] <i>Co-Counsel for Defendant/Counter-Plaintiff Bradley J. Edwards</i></p>	<p>Marc S. Nurik Law Offices of Marc S. Nurik One E. Broward Boulevard, Suite 700 Ft. Lauderdale, FL 33301 [REDACTED] <i>Counsel for Defendant Scott Rothstein</i></p>
<p>Tonja Haddad Coleman 315 S.E. Seventh Street, Suite 301 Ft. Lauderdale, FL 33301 [REDACTED] <i>Co-Counsel for Plaintiff/Counter-Defendant Jeffrey Epstein</i></p>	<p>Fred Haddad Haddad & Navarro, PLLC 1 Financial Plaza, Suite 2612 Fort Lauderdale, FL 33394 [REDACTED] <i>Co-Counsel for Plaintiff/Counter-Defendant Jeffrey Epstein</i></p>
<p>W. Chester Brewer, Jr. W. Chester Brewer, Jr. P.A. 250 Australian Avenue S., Suite 1400 West Palm Beach, FL 33401 [REDACTED] <i>Co-Counsel for Plaintiff/Counter-Defendant Jeffrey Epstein</i></p>	<p>Jack A. Goldberger Atterbury, Goldberger & Weiss, P.A. 250 Australian Avenue S., Suite 1400 West Palm Beach, FL 33401 [REDACTED] <i>Co-Counsel for Plaintiff/Counter-Defendant Jeffrey Epstein</i></p>

TRIAL CONTINUANCE APPROVED:

Jeffrey E. Epstein
Plaintiff/Counter-Defendant

Dated: November 6, 2017

A33

EFTA00798199

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

CASE NO.: 2009 CA 040800 XXXXMB
HONORABLE JUDGE DAVID F. CROW

JEFFREY EPSTEIN,

Plaintiff,

vs.

SCOTT ROTHSTEIN, BRADLEY
J. EDWARDS, and LM,

Defendants.

FILED
10 FEB 17 PM 2:25
CLERK
Palm Beach County, FL
CIRCUIT CIVIL 4

DEFENDANT SCOTT ROTHSTEIN'S MOTION TO SET ASIDE DEFAULT

Defendant, SCOTT ROTHSTEIN ("Rothstein" or "Defendant"), by and through undersigned counsel and pursuant to Fla. R. Civ. P. 1.540, hereby moves to set aside the Clerk's Default entered against Defendant, and alleges and asserts as follows:

1. On or about December 7, 2009, Plaintiff filed this lawsuit against Rothstein.
2. Pursuant to the court docket, on or about December 14, 2009, Plaintiff caused the summons and Complaint to be served upon Rothstein.
3. Defendant has been housed at the Federal Detention Center, Miami, since December 2009.
4. Defendant has been pulled out of his cell many times by Bureau of Prisons staff since his incarceration to receive service of lawsuits at all hours.
5. To the best of Defendant's knowledge and belief, he does not recall being served with this lawsuit. If he was, in fact, properly served with this lawsuit it has been misplaced

within the pile of numerous lawsuits and voluminous amount of other legal papers and has not been located.

6. In addition, undersigned counsel was not aware that service had been made or attempted upon Defendant. Although Defendant is not able to hand any documents to counsel at the Federal Detention Center pursuant to Bureau of Prison rules and regulations, had the undersigned had knowledge of this lawsuit, counsel would have contacted Plaintiff's counsel to obtain a copy of same as has been done with various other suits currently pending against the Defendant.

7. Defendant and undersigned counsel only recently learned about the lawsuit and immediately checked all Court dockets in the tri-county area in an attempt to locate where the lawsuit was pending and the status thereof.

8. It was only at that time, through the on-line Clerk Connect docket system that counsel learned that a Motion for Default was filed on or about December 31, 2009 and a Default was entered on or about January 21, 2010. Again, to the best of Defendant's knowledge, he was not served with a copy of the Motion for Default and to date, has not seen a copy of the Motion, nor has undersigned counsel.

9. The Defendant would be extremely prejudiced if the court were to disallow the Defendant's Motion to Set Aside Default and respectfully requests this Court set aside any default based on excusable neglect.

10. The Defendant has a viable defense to the allegations contained in the Plaintiff's Complaint.

WHEREFORE, Defendant, Scott Rothstein, respectfully requests that this Court enter an Order granting Defendant's Motion to Set Aside Default and setting aside the Default.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by U.S. Mail to:
Robert D. Critton, Jr., Esq., Burman Critton Luttier & Coleman, 303 Banyan Boulevard, Suite
400, West Palm Beach, FL 33401, this 17th day of February, 2010.

LAW OFFICES OF MARC S. NURIK
Counsel to Scott Rothstein
One East Broward Boulevard, Suite 700
Fort Lauderdale, FL 33301

[REDACTED] 556

By: _____

MARC S. NURIK
Florida Bar No. 272817

NOT A CERTIFIED COPY