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

JEFFREY EPSTEIN,

Plaintiff/Counter-Defendant,

vs.

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

Defendant/Counter-Plaintiff.
_____/

Case No. 50 2009 CA 040800XXXXMBAG

JUDGE: HAFELE

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

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

I. PROCEDURAL HISTORY

In December 2009, Epstein filed suit against Scott Rothstein ("Rothstein") and Bradley J. Edwards ("Edwards"), based upon both Epstein and his attorneys' justifiable belief at the time of filing the Complaint, that these two defendants, and other unknown partners of theirs at Rothstein, Rosenfeldt, Adler ("RRA"), engaged in serious misconduct that admittedly involved the use of civil cases that had been filed against Epstein by Rothstein's partner Edwards to operate and further a massive and illegal Ponzi scheme through their law firm (the "Ponzi Scheme"). Rothstein himself admitted to, and was convicted for, this Ponzi scheme, and part of

that admission included Rothstein's confession that these cases against Epstein were used as bait to lure unsuspecting investors into the fraudulent scheme. After taking the deposition of Scott Rothstein, and receiving numerous adverse rulings from this Court, the Federal government, and the Bankruptcy Court precluding Epstein from receiving discovery germane to proving his case, Epstein dismissed his case against Edwards, without prejudice.

In response to Epstein's original lawsuit, Edwards filed a Counterclaim, and after a series of dismissals thereof and four (4) revisions, Edwards stated two causes of action against Epstein: Abuse of Process and Malicious Prosecution. Epstein denied liability as to these claims and asserted various affirmative defenses which Edwards did not overcome. Epstein filed his Motion for Summary Judgment, which was granted by this Court as to both counts. Edwards appealed. While the Abuse of Process count was disposed of by way of the Summary Judgment, this Court's ruling as to the Malicious Prosecution count, on which this Court granted Summary Judgment following binding precedent of *Wolfe v. Foreman,* 128 So. 3d 67 (Fla. 3d DCA 2013) regarding the litigation privilege, was reversed and remanded for further proceedings by the Appellate courts. As demonstrated fully below, the Malicious Prosecution count still cannot stand against Epstein due to his failure to satisfy all of the elements required thereby. As such, there are no issues of material fact, and Summary Judgment is warranted as a matter of law.

II. SUMMARY OF THE ARGUMENT

Summary Judgment should be entered in favor of Epstein on Edwards's cause of action for Malicious Prosecution. Edwards has not, and will never be able to, prove a want of probable cause, as the undisputed facts delineated below irrefutably establish that there was probable cause as a matter of law at the time Epstein filed his Complaint. Accordingly, Epstein is entitled to judgment as a matter of law.

III. STATEMENT OF UNDISPUTED FACTS

Edwards's sole remaining cause of action against Epstein is for Malicious Prosecution. Edwards's suit is premised upon Epstein's filing of a lawsuit against Edwards and Scott Rothstein for Abuse of Process. *See Edwards's Fourth Amended Counterclaim.* Epstein has continually maintained that Edwards did not, and cannot, establish a cause of action against him for Malicious Prosecution. *See Epstein's Answer and Affirmative Defenses.* In contrast, Edwards contends that Epstein filed his causes of action against Edwards without the requisite cause, and for a myriad of other reasons as delineated in his Counterclaim. *See Edwards's Fourth Amended Counterclaim.* However, at the time Epstein filed his case against Edwards and Rothstein, and each of his Amended Complaints, there existed the following uncontested, incontrovertible, and undeniable facts[1]:

Edwards was a partner at Rothstein Rosenfeld Adler ("RRA") from April 2009 through November 2009. *See Deposition Transcript of Bradley Edwards dated March 23, 2010; Deposition Transcripts of Scott W. Rothstein in In re: Rothstein Rosenfeldt Adler, PA*; 09-34791-RBR and *Razorback Funding, LLC, et al. v. Scott W. Rothstein, et al.*, Case No. 09-062943(19). During that time, his firm was a front for the largest Ponzi scheme in Florida's history. *See Information Charging Scott W. Rothstein in United States of America v. Scott W. Rothstein,* 09-60331-CR-COHN; *Epstein's Answer and Affirmative Defenses to Edwards's Fourth Amended Counterclaim; Deposition Transcripts of Scott W. Rothstein in In re: Rothstein Rosenfeldt Adler, PA*; 09-34791-RBR and *Razorback Funding, LLC, et al. v. Scott W. Rothstein, et al.*, Case No. 09-062943(19). During that time RRA, through its partner, Bradley Edwards, was prosecuting three civil cases against Epstein (the "Epstein Cases"). *See pleadings in LM v. Jeffrey Epstein,*

[1] A separate index and copies of all items cited in the undisputed facts is filed contemporaneously herewith.

502008CA028051XXXXMB AB*; EW v. Jeffrey Epstein,* 502008CA028058XXXXMB AB*; and Jane Doe v. Jeffrey Epstein,* 08-80893-CIV [redacted]; *Deposition Transcript of Jeffrey Epstein*, p. 23; line 4-p. 38; line 22.

In early November 2009, Epstein learned from his attorneys and the press that RRA had imploded, and that the Epstein cases being prosecuted against him by Edwards and RRA were used to defraud investors of millions of dollars and fund the RRA Ponzi scheme[2]. *Amended Complaint in Razorback Funding, LLC, et al. v. Scott W. Rothstein, et al.*, Case No. 09-062943(19); *see Deposition Transcript of Bradley Edwards dated March 23, 2010; Deposition Transcripts of Scott W. Rothstein in In re: Rothstein Rosenfeldt Adler, PA*; 09-34791-RBR and *Razorback Funding, LLC, et al. v. Scott W. Rothstein, et al.*, Case No. 09-062943(19); *Deposition Transcript of Jeffrey Epstein*. Edwards was the lead counsel and the supervising attorney over each of the Epstein Cases used to lure investors and fund the Ponzi scheme. *See pleadings in LM v. Jeffrey Epstein,* 502008CA028051XXXXMB AB*; EW v. Jeffrey Epstein,* 502008CA028058XXXXMB AB*; and Jane Doe v. Jeffrey Epstein,* 08-80893-CIV [redacted].

At or about the same time in November 2009, the law firm of Conrad Scherer very publicly filed a Complaint against Scott Rothstein and others, *Razorback Funding, LLC, et al. v. Scott W. Rothstein, et al.*, Case No. 09-062943(19) (hereinafter referenced as the "Razorback Complaint"), on behalf of some of the Ponzi scheme investors. Mr. Scherer asserted the following in his Complaint regarding the Epstein Cases:

> In certain instances, the purported settlements, albeit fraudulent, were based on actual cases being handled by RRA. For example, one of the settlements involved

[2] In fact, one could not read a newspaper or turn on the television without hearing about RRA and the Ponzi scheme for several months.

> herein was based upon facts surrounding Jeffrey Epstein, the infamous billionaire financier. In fact, RRA did have inside information due to its representation of one of Epstein's alleged victims in a civil case styled Jane Doe v. Jeffrey Epstein, pending in the Southern District of Florida. Representatives of D3 were offered "the opportunity" to invest in a pre-suit $30,000,000.00, court settlement against Epstein arising from the same set of operative facts as the Jane Doe case, but involving a different underage female plaintiff. **To augment his concocted story Rothstein invited D3 to his office to view the thirteen banker's boxes of actual case files in Jane Doe in order to demonstrate that the claims against Epstein were legitimate and that the evidence against Epstein was real. In particular, Rothstein claimed that his investigative team discovered that there were high-profile witnesses onboard Epstein's private jet where some of the alleged sexual assaults took place and showed D3 copies of a flight log purportedly containing names of celebrities, dignitaries and international figures.** Because of these potentially explosive facts, putative defendant Epstein had allegedly offered $200,000,000.00 for settlement of the claims held by various young women who were his victims. Adding fuel to the fire, the investigative team representative privately told a D3 representative that they found three additional claimants which Rothstein did not yet know about.

See Razorback Amended Complaint; pp. 16-17; ¶ 48 (emphasis added).

> Additionally, Rothstein used RRA's representation in the Epstein case to pursue issues and evidence unrelated to the underlying litigation but which was potentially beneficial to lure investors into the Ponzi scheme. For instance, **RRA relentlessly pursued flight data and passenger manifests regarding flights Epstein took with other famous individuals knowing full well that no under age [sic] women were on board and no illicit activities took place. RRA also inappropriately attempted to take the depositions of these celebrities in a deliberate effort to bolster Rothstein's lies.**

See Razorback Amended Complaint; page 17; ¶ 49 (emphasis added). All of these deposition subpoenas and discovery requests to which the Razorback Complaint refers were served and filed by Edwards at the time that Edwards was a partner at RRA and the lead attorney on the Epstein Cases. *See letter dated July 22, 2009 from Edwards, attached as Exhibit 3 to his deposition of March 23, 2010; dockets and pleadings in LM v. Jeffrey Epstein,* 502008CA028051XXXXMB AB*; EW v. Jeffrey Epstein,* 502008CA028058XXXXMB AB*; LM v. Jeffrey Epstein,* 09-81092 [redacted] *and Jane Doe v. Jeffrey Epstein,* 08-80893-CIV

[redacted]/[redacted]*; copies of subpoenas; Deposition Transcript of Jeffrey Epstein*, p. 23; line 4-p. 38; line 22*; Initial Complaint filed by Epstein dated December 9, 2009*, pages 13-20. The allegations in the Razorback Complaint that the Epstein Cases were used to lure investors in the Ponzi Scheme were confirmed by, among other facts[3], the sworn testimony of Scott Rothstein. *Deposition Transcripts of Scott W. Rothstein in In re: Rothstein Rosenfeldt Adler, PA*; 09-34791-RBR and *Razorback Funding, LLC, et al. v. Scott W. Rothstein, et al.*, Case No. 09-062943(19).

On December 1, 2009, also before Epstein filed suit, the Information against Scott Rothstein was filed by the Federal government. *See Information Charging Scott W. Rothstein in United States of America v. Scott W. Rothstein,* 09-60331-CR-COHN. The Information repeatedly references RRA as the Enterprise with which Rothstein and his co-conspirators were associated and by which they were employed. There were no co-conspirators identified by name; rather, the Information charges that "Rothstein and his conspirators, known and unknown," participated in or conspired to participate in "racketeering activity" to further the Ponzi scheme. Specifically, it alleged that

> The potential investors were told by defendant ROTHSTEIN and other co-conspirators that confidential settlement agreements were available for purchase. The purported settlements were allegedly available in amounts ranging from hundreds of thousands of dollars to millions of dollars and could be purchased at a discount and repaid to the investors at face value over time. Defendant ROTHSTEIN and other co-conspirators utilized the offices of RRA and the offices of other co-conspirators to convince potential investors of the legitimacy and success of the law firm, which enhanced the credibility of the purported investment opportunity. Defendant ROTHSTEIN and other co-conspirators made false and misleading statements and omissions which were intended to fraudulently induce potential investors into purchasing the confidential settlements.

[3] While Epstein's case was pending against Edwards, the Razorback case settled for approximately $170 million dollars.

See Information Charging Scott W. Rothstein in United States of America v. Scott W. Rothstein, 09-60331-CR-COHN, pp. 4-5. Scott Rothstein, Edwards's partner at RRA, admitted to and was convicted for these acts that occurred at RRA. He is serving a fifty (50) year sentence. *See Information Charging Scott W. Rothstein in United States of America v. Scott W. Rothstein,* 09-60331-CR-COHN; *Plea Agreement between United States of America and Scott W. Rothstein,* 09-60331-CR-COHN.

On July 23, 2009, Edwards held a meeting at RRA with all attorneys regarding the Epstein Cases. *See Privilege Log of Farmer, Jaffe, Weissing, Edwards, Fistos & Lehrman, Dated February 23, 2011* as filed in this matter and in *In re: Rothstein Rosenfeldt Adler, P.A.;* 09-34791-RBR. The next day, on July 24, 2009, Edwards filed a two hundred thirty-four (234) page, one fifty-six (156) count federal complaint against Epstein on behalf of a plaintiff, LM, for whom Edwards was already prosecuting a case against Epstein in state court involving the very same facts alleged in the federal complaint. *See LM v. Jeffrey Epstein,* 09-81092 [redacted]; *Deposition Transcript of Jeffrey Epstein*, p. 23; line 4-p. 38; line 22. This new Federal Complaint was shown to the Ponzi scheme investors. *See Razorback Funding, LLC, et al. v. Scott W. Rothstein, et al.*, Case No. 09-062943(19).

Also while a partner at RRA, Edwards filed a motion in Federal court in which he requested that the court Order Epstein to post a **fifteen million dollar** bond in the *Jane Doe* case that was being touted to the investors. *See Jane Doe v. Jeffrey Epstein,* 08-80893-CIV [redacted]; *See Razorback Funding, LLC, et al. v. Scott W. Rothstein, et al.*, Case No. 09-062943(19). Edwards filed the Initial Motion in June 2009 and filed his Reply to Epstein's Opposition to the Motion on July 23, 2009; the same day on which he held his *all attorney*

meeting at RRA referenced above. In his Reply Motion, Edwards discussed, at length, Epstein's net worth. This was at the exact time, according to Rothstein and the Federal government, that the Ponzi scheme was unraveling. *Depositions taken of Scott W. Rothstein in In re: Rothstein Rosenfeldt Adler, PA*; 09-34791-RBR. The Court rejected Edwards's bond motion, stating:

> Plaintiff's motion is **entirely devoid of evidence** of Defendant's alleged fraudulent transfers. The Court declines to conclude that Defendant is fraudulently transferring assets based upon the adverse inferences relied upon by Plaintiff. Plaintiff's supplemental filing regarding the titles of approximately five of Defendant's vehicles is clearly de minimis, particularly in light of **Plaintiff's repeated characterization of Defendant as a "billionaire."**

See Order in Jane Doe No. 2 v. Epstein Dated November 5, 2009, 08-cv-80119 (emphasis added).

These are the incontrovertible facts that existed at the time Epstein filed his Complaint and the two amendments thereto, and were the facts upon which Epstein relied to assert his causes of action against Rothstein and Edwards.

IV. MEMORANDUM OF LAW

A. STANDARD FOR SUMMARY JUDGMENT

Summary judgment is proper if there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. *Volusia County v. Aberdeen at Ormond Beach,* 760 So. 2d 126, 130 (Fla. 2000); *Smith v. Shelton*, 970 So. 2d 450, 451 (Fla. 4th DCA 2007). Likewise, Summary Judgment is mandated when the pleadings, depositions, answers to interrogatories, admissions, affidavits, and other materials in evidence on file show that there are no genuine issues as to any material fact and that the moving party is entitled to judgment as a matter of law. FLA. R.CIV. P. 1.510(c). "Once the movant for summary judgment tenders competent evidence to support his motion, the opposing party must come forward with counter-

evidence sufficient to reveal a genuine issue of material fact." *Glasspoole v. Konover Constr. Corp. South*, 787 So. 2d 937, 938 (Fla. 4th DCA 2001) (citing The Fla. Bar v. Mogil, 763 So. 2d 303, 307 (Fla. 2000)); *Cohen v. Arvin*, 878 So. 2d 403, 405 (Fla. 4th DCA 2004). Finally, a complete failure of proof of any essential element of a party's cause of action necessarily renders all other facts offered by the non-moving party immaterial. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986).

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

B. SUMMARY JUDGMENT SHOULD BE ENTERED IN FAVOR OF EPSTEIN ON EDWARDS'S CLAIM FOR MALICIOUS PROSECUTION AS EDWARDS CANNOT SATISFY ALL OF THE ELEMENTS OF THE CAUSE OF ACTION AS A MATTER OF LAW

Actions for malicious prosecution are "not generally favored." *Central Florida Machinery Co., Inc. v. Williams*, 424 So. 2d 201, 202 (Fla. 2d DCA 1983). A malicious

prosecution action requires that a plaintiff prove ***each*** of the following six elements: 1) a criminal or civil judicial proceeding was commenced against the plaintiff; 2) the proceeding was instigated by the defendant in the malicious prosecution action; 3) the proceeding ended in the plaintiff's favor; 4) the proceeding was instigated with malice; 5) the defendant lacked probable cause; and 6) the plaintiff was damaged. *See Doss v. Bank of America,* [redacted]., 857 So. 2d 991, 994 (Fla. 5th DCA 2003); *Kalt v. Dollar Rent-A-Car,* 422 So. 2d 1031, 1032 (Fla. 3d DCA 1982) (holding that "[t]**he absence of any one of these elements will defeat a malicious prosecution action.**")(emphasis added); *Adams v. Whitfield,* 290 So. 2d 49, 51 (Fla. 1974); *Alamo Rent-A-Car, Inc. v. Mancusi*, 632 So. 2d 1352, 1355 (Fla. 1994).

In a malicious prosecution case, the plaintiff must establish an absence of probable cause as an element of the tort. *Daniel v. Village of Royal Palm Beach*, 889 So. 2d 988 (Fla. 4th DCA 2004). The threshold for establishing probable cause in a civil action is extremely low and easily satisfied; to wit: whether the defendant, at the time of asserting the claim, "reasonably could have believed" that the person in the previous action was guilty of the claims previously alleged." *Gill v. Kostroff*, 82 F. Supp. 2d 1354 ([redacted]. Fla. 2000) (applying Florida law) (citing State v. Cote, 547 So. 2d 993, 996 (Fla. 4th DCA 1989)); *Wright v. Yurko*. 446 So. 2d 1162, 1167 (Fla. 5th DCA 1984). "A determination of whether probable cause exists is based on the facts known by the defendant in the malicious prosecution action **at the time the underlying action was initiated**, not some later point in time." *Gill*, 82 F.Supp. 2d at 1364 (citing United States v. Irurzun, 631 F.2d 60, 62 (5th Cir.1980) (emphasis added)). This is an extremely low legal burden, satisfied by the subjective facts as known at the time the underlying action was initiated. *See Wright v. Yurko,* 446 So. 2d 1162, 1166 (Fla. 5th DCA 1984) ("The standard for establishing probable cause in a civil action is extremely low and easily satisfied.").

"To shoulder the 'onerous burden' of demonstrating an absence of probable cause, the plaintiff must show that the original criminal proceeding was initiated 'without a reasonable ground of suspicion, supported by circumstances sufficiently strong in themselves to warrant a cautious man in the belief that the person accused is guilty of the offense with which he is charged.'" *Burns v. GCC Beverages, Inc.,* 502 So. 2d 1217, 1219 (Fla. 1986). Furthermore, the law is clear that "[p]robable cause in the context of a civil suit is measured by a **lesser standard than in a criminal suit**." *Wright*, 446 So. 2d at 1166 (emphasis added). It is well-rooted in Florida law "that a criminal charge may be based on probable cause while a conviction of the person accused cannot be obtained unless he be found guilty beyond a reasonable doubt." *Ward v. Allen*, 11 So. 2d 193 (Fla. 1942). As such, the level of cause needed to bring forth an action, even in a criminal case, is far less than that necessary to support a criminal conviction. Courts must only look to the facts within the Plaintiff's knowledge at the time suit was filed to determine if they were sufficient to constitute probable cause for the commencement of the lawsuit. *Fee, Parker & Lloyd, P. A. v. Sullivan*, 379 So. 2d 412, 418 (Fla. 4th DCA 1980).

Here, Epstein is entitled to judgment as a matter of law because Edwards cannot satisfy the indispensable element of the absence of probable cause. *Thompson McKinnon Securities, Inc. v. Light*, 534 So. 2d 757, 759 (Fla. 3d DCA 1988). As the Florida Supreme Court stated in *Goldstein v. Sabella*, 88 So. 2d 910 (Fla.1956):

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

Id. at 911 (emphasis added); *Fee, Parker & Lloyd, P. A. v. Sullivan*, 379 So. 2d 412 (Fla. 4th DCA 1980).

As irrefutably established by the statement of undisputed facts above, all of which existed *at the time Epstein filed suit*, there was undeniably probable cause to file suit, negating that element of Edwards's malicious prosecution claim. The undisputed facts in this case demonstrate that when Epstein filed his Complaint in December 2009, and throughout the remainder of the time during which the underlying action was pending, Epstein had the requisite cause to file and maintain his lawsuit. *See Statement of Undisputed Facts and exhibits.* Here, the allegations in Epstein's lawsuit against Edwards, coupled with the irrefutable facts surrounding the underlying "Epstein Cases" and what was occurring at RRA during the time in question as delineated in the undisputed facts above, irrefutably establish that Epstein had the requisite cause, and a good faith basis upon which to file suit against Rothstein and Edwards, warranting Summary Judgment.

In *Mee Industries v. Dow Chemical Co.*, 608 F.3d 1202 ([redacted]. Fla. 2010), a patent infringement case, the Middle District of Florida, applying Florida state law, avowed that "we refer to the probable cause standard as reasonable suspicion." *Id.* at 1211-12. The court also opined that probable cause, particularly in a civil suit, is not a high bar to meet, and that "[i]n most circumstances, we would continue to expect malicious prosecution plaintiffs to have a difficult time establishing lack of probable cause." *Id.* at 1218. The court's analysis relied upon the cases above, stating the following:

> In order to prevail on a claim of malicious prosecution, the plaintiff must prove, inter alia, that "there was an absence of probable cause for the original proceeding." Alamo Rent–A–Car, Inc. v. Mancusi, 632 So.2d 1352, 1355 (Fla.1994). "To establish probable cause, it is not necessary to show that the instigator of a lawsuit was certain of the outcome of the proceeding, but rather that he had a reasonable belief, based on facts and circumstances known to him, in the validity of the claim." Wright v. Yurko, 446 So.2d 1162, 1166 (Fla. 5th DCA

> 1984) (footnotes omitted). In other words, the instigator must have had "'[a] reasonable ground of suspicion, supported by circumstances sufficiently strong in themselves to warrant a cautious man in the belief that the person accused is guilty of the offense with which he is charged.' " Goldstein v. Sabella, 88 So.2d 910, 911 (Fla.1956) (quoting Dunnavant v. State, 46 So.2d 871, 874 (Fla.1950)). "Probable cause in the context of a civil suit is measured by a lesser standard than in a criminal suit." Wright, 446 So.2d at 1166.

Id. at 1211.

The case of *EMI Sun Vill., Inc. v. Catledge*, 2013 WL 5435780 ([redacted]. Fla. Sept. 27, 2013) is illustrative. In *Catledge* the Federal court, applying Florida state law and granting the Defendants' Motion to Dismiss a claim for malicious prosecution, held that a review of the record demonstrated that Defendants had ample probable cause to bring the underlying litigation based on the evidence of a fraudulent scheme. In that underlying case, father and son Frederick and Derek Elliott ("the Elliots") and a web of related companies ("the Elliott Companies") were accused of defrauding "hundreds of investors ... out of approximately $170 million in an elaborate Ponzi scheme." *Id*. The former Defendants in that case then filed suit against the former plaintiffs for abuse of process and malicious prosecution. *Id*. In defending their actions, the current defendants, who were the plaintiffs in the underlying litigation, pointed "to the substantial investor losses and the criminal referral by Judge Gold as evidence of probable cause." The court agreed that at the time suit was filed, the evidence of the fraudulent scheme was sufficient to establish probable cause to bring forth a suit. *Id*. at * 4 (relying on *Fee, Parker & Lloyd, P. A. v. Sullivan*, 379 So. 2d 412 (Fla.4th DCA 1980)). *See also Gill v. Kostroff*, 82 F.Supp. 2d 1354 ([redacted]. Fla. 2000) ("[c]ommon sense dictates that in determining whether probable cause exists for the initiation of a previous action, a defendant can only be required to rely on information reasonably obtained and known to the defendant at the time the cause of action was initiated. Plaintiff would have the Court find that Defendants Kostroff and First Card

were required to look into the future and predict whether probable cause existed based upon information that was only later to be gained. This is unreasonable.") (citing to Wright v. Yurko, 446 So. 2d 1162 (Fla. 5th DCA 1984)).

Similarly, in the case at bench, at the time Epstein filed suit against Edwards and Rothstein, Edwards was a partner at RRA and the lead attorney on the cases being prosecuted by RRA against Epstein. The cases Edwards was prosecuting against Epstein had, undeniably, been used to defraud investors, and his firm was a front for the largest Ponzi scheme in Florida's history. *See Information Charging Scott W. Rothstein in United States of America v. Scott W. Rothstein,* 09-60331-CR-COHN; *Epstein's Answer and Affirmative Defenses to Edwards's Fourth Amended Counterclai; Deposition Transcripts of Scott W. Rothstein in In re: Rothstein Rosenfeldt Adler, PA*; 09-34791-RBR and *Razorback Funding, LLC, et al. v. Scott W. Rothstein, et al.*, Case No. 09-062943(19). Additionally, multi-million dollar lawsuits were being filed against RRA, Rothstein, and others regarding the Ponzi scheme, relying therein upon the use of the Epstein Cases and fraudulently prepared documents and discovery from the Epstein Cases that were shown to investors. *See Razorback Amended Complaint*; pp. 16-17; ¶¶ 48 – 49.

Furthermore, the Information filed against Scott Rothstein by the Federal government repeatedly references RRA as the Enterprise with which Rothstein and his co-conspirators were associated and by which they were employed. There were no co-conspirators identified by name; rather, the Information charges that "Rothstein and his conspirators, known and unknown," participated in or conspired to participate in "racketeering activity" to further the Ponzi scheme. *See Information charging Scott W. Rothstein.* Finally, as delineated in the statement of undisputed facts above, Edwards filed a Federal case against Epstein alleging the identical claims as those which were already pending in state court. Edwards then filed meritless motions

regarding Epstein's financial net worth in Federal court during the exact time the cases were being shown to the investors. These the subjective facts; the facts known to Epstein at the time the underlying action was initiated, incontrovertibly satisfy the extremely low threshold of probable cause required to defeat a malicious prosecution claim. *See Wright v. Yurko,* 446 So. 2d 1162, 1166 (Fla. 5th DCA 1984). Accordingly, Summary Judgment is proper.

Additionally, in *Fee, Parker & Lloyd, P. A. v. Sullivan*, 379 So. 2d 412 (Fla. 4th DCA 1980), a medical doctor brought a malicious prosecution suit against his former patient, James Terry, and the patient's lawyers. The underlying suit was a medical malpractice action against Dr. Sullivan, which was voluntarily dismissed by Terry prior to trial. Dr. Sullivan's suit alleged that the Defendants did not have probable cause to sue him for medical malpractice in the underlying cause of action. The jury returned a verdict in favor of Terry and Dr. Sullivan appealed. *Id*. On appeal, after examining the facts known to Terry at the time the suit was filed, the Fourth District Court of Appeal reversed the jury verdict. *Id.* The information the plaintiff had in the underlying suit was as follows: the plaintiff had to undergo multiple surgeries; Dr. Sullivan may have deviated from standard procedure or protocol; the doctor who performed the subsequent surgery stated that he felt that Dr. Sullivan had done a sub-standard job; and that Sullivan deliberately kept information out of the records at the hospital. *Id*.

The court, after applying these facts to the low threshold standard of probable cause applicable to the malicious prosecution claim, reversed the verdict in favor of Dr. Sullivan and stated that "one need not be certain of the outcome of a criminal or civil proceeding to have probable cause for instituting such an action." The court likewise noted "we do not pass upon the question of whether there was medical malpractice, only that there was probable cause to believe so." *Id*. *See also Gallucci v. Milavic*, 100 So. 2d 375 (Fla. 1958) ("Justification for instituting the

criminal proceedings against appellant existed if appellee entertained a reasonable ground of suspicion, 'supported by circumstances sufficiently strong in themselves to warrant a cautious man in the belief' that appellant was guilty of the larceny of the cars and other property, to paraphrase the language quoted from Dunnavant v. State, Fla., 46 So.2d 871, in Goldstein v. Sabella, Fla., 88 So. 2d 910. A person need not be sure of the result of an eventual trial to have probable cause to start a prosecution.") *Id.* Similarly, in the instant case, the facts known to Epstein at the time he filed suit against Edwards and Rothstein need not establish that there was an actual abuse of process committed by the Defendants, but rather that "that there was probable cause to believe so." *Id.*

Finally, both the existence of the Ponzi scheme and the wake of litigation culminating therefrom, both civil and criminal, is a matter of public record throughout the State and Federal courts in Florida. While the undisputed facts are more than sufficient to satisfy the low threshold necessary to establish the requisite cause for Epstein to bring suit at the time that he did against Epstein and Rothstein, the Court may also consider all matters of public record in all of the cases delineated above. *See Halmos v. Bomardier Aerospace Corp.,* 404 F. App'x 376 (11th Cir. 2010) (relying upon the facts in the Complaint and the facts of public record in dismissing the case for failure to prove lack of probable cause). The undisputed facts as delineated above unequivocally establish the requisite cause to believe that an abuse of process was occurring, and as such Summary Judgment should be granted.

CONCLUSION

Edwards has no evidence to support his cause of action at this late juncture because such evidence does not exist. Accordingly, Summary Judgment must be granted for Epstein because there is no material issue of fact to resolve. Accordingly, in reliance upon the foregoing

arguments and authorities, Plaintiff/Counter-Defendant Jeffrey Epstein respectfully requests that the Court grant his Motion for Summary Judgment.

WE HEREBY CERTIFY that a true and correct copy of the foregoing was served, via electronic service, to all parties on the attached service list, this May 19, 2017.

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