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 JEFFREY EPSTEIN'S MOTION TO STRIKE DEFENDANT/COUNTER-PLAINTIFF'S DAMAGES EXPERT WITNESS, DR. BERNARD JANSEN, AND TO EXCLUDE HIS TESTIMONY

Plaintiff/Counter-Defendant, Jeffrey Epstein ("Epstein"), moves to strike the expert witness and to exclude the admission of any testimony from Defendant/Counter-Plaintiff, Bradley J. Edwards' ("Edwards") expert Dr. Bernard Jansen because his testimony does not assist the trier of fact, and states:

INTRODUCTION

Edwards is Attempting to Recover Damages Based on a Defamation Action

Despite protestations to the contrary and this Court's rulings, Edwards plans to seek damages based on a defamation action. Edwards' expert confirms this and Edwards has illustrated this in both statements made to the Court and in discovery:

- March 24, 2011: In his Case Management Statement, Edwards informed the Court that, because he had to defend against Epstein's "spurious claims," he had to endure "the public embarrassment of having been branded as a participant in one of history's largest and most notorious Ponzi schemes." (D.E. 284, p. 2.)

- October 4, 2011 and November 29, 2011: While in his original Counterclaim filed December 21, 2009, Edwards alleged that Epstein's Complaint was "nothing more than a press release" (D.E. 18, ¶ 11), in his October 4, 2011, Amended Counterclaim and November 29, 2011, Second Amended Counterclaim, he characterized it as a "***highly defamatory*** press release." (D.E. 388, ¶ 13) (D.E. 413, ¶ 9).

- January 6, 2012: In Answers to Interrogatories, Edwards stated that: "Bradley Edwards has described the special damages he has sustained and will continue to sustain in the future in his currently pending counterclaim. He has been falsely accused of immoral, unethical and illegal conduct impugning his professional integrity, his professional competence, and his fitness to practice law. ***Such accusations are defamatory per se*** and Florida law conclusively presumes the damages that inevitably arises from such ***defamation***. The false accusations have been disseminated repeatedly throughout not only the South Florida legal community but nationally and internationally." (**Ex. A**, No. 1, e.s.)

  In addition, in response to the interrogatory asking Edwards to explain the basis of his claim that his reputation had been injured, he simply responded, "***Defamation per se."*** (**Ex. A**, No. 5, e.s.)

  To another request, Edwards responded: "Epstein's malicious, unsupported, unsupportable, false accusations of Bradley Edwards' knowing involvement and active participation in a massive Ponzi scheme singled Mr. Edwards out from among all other innocent RRA employees. Those accusations were the only source ***falsely*** linking Bradley Edwards to Rothstein's criminal enterprise, and absent those allegations there is no basis to believe that Bradley Edwards' impeccable professional reputation would have been tarnished by his brief employment with Rothstein Rosenfeldt & Adler." (**Ex. A**, No. 6.)

- May 21, 2012 and January 9, 2013: In his Third and Fourth Amended Counterclaims, Edwards continued to characterize Epstein's Complaint as a "***highly defamatory*** press release." (D.E. 490, ¶ 9, e.s.) (D.E. 571, ¶ 9, e.s.).

- September 25, 2017: In recent Answers to Interrogatories, Edwards continued to base his claims on alleged defamatory statements: "The allegations of Epstein's maliciously filed Complaint ***are defamatory per se***." (**Ex. B**, No. 35, e.s.)

- October 10, 2017: In opposition to Epstein's Motion to Stay, Edwards referenced Epstein's alleged "***malicious lies***": "… the poisonous effects of Epstein's ***malicious lies*** about Edwards remain judicially unremedied. Edwards is entitled to his day in Court to publicly prove that the scurrilous claims made by Epstein were nothing but a baseless attempt at extortion." (D.E. 1012, p. 12, e.s.)

- November 10, 2017: Edwards testified at his deposition that there "still looms this ***false allegation*** over my head." (**Ex. C**, p. 12, e.s.) Edwards claimed that his reputation suffered damage that "unless and until a jury returns a verdict in my favor, can't be undone." (**Ex. C**, p. 36.)

EFTA00805443

"WEAK" – An Opinion or a Verifiable Statement of Fact?

In the recent hearings before this Court, Edwards has focused, in large part, on Epstein's allegation in the original Complaint that Edwards' clients' cases were "weak." (D.E. 5, ¶42h.) (11/29/17 Tr. 65:22-66:3.)[1] ("But the fact of the matter is that Bradley Edwards was sued for ginning up, fabricating, constructing those three cases, and others, as a knowing participant in Florida's largest Ponzi scheme …." (11/29/17 Tr. 62:21-25.) This Court commented during dialogue with counsel that the allegations in the original Complaint said "weak":

> [T]he allegation … in subparagraph h … "Rothstein and the litigation team … knew or should have known that their three filed cases were weak and had minimal value …

(11/29/17 Tr. 80:17-81:7.)

Epstein's allegation, however, is nothing more than the author's subjective belief of the economic value of the three civil cases. The view that something is "weak" falls within the classic definition of an opinion, is not a statement of fact and, thus, is not actionable in a defamation case. *Zorc v. Jordan*, 765 So. 2d 768, 771 (Fla. 4th DCA 2000) ("'A false statement of fact is absolutely necessary if there is to be recovery in a defamation action.'"). *Fid. Warranty Services, Inc. v. Firstate Ins. Holdings, Inc*., 74 So. 3d 506, 515 (Fla. 4th DCA 2011) ("A party cannot recover for defamation based on statements which are pure opinion.").

Consistent with Edwards' testimony, pleadings, argument, and now damages expert, there can be no question: Edwards is attempting to "clear his name" by proving that individual allegations pled by Epstein in the original civil proceeding against Edwards were false. The cherry-picking of individual statements in one entire original civil proceeding to determine the truth or falsity of any statement is appropriate for a defamation action, not a malicious prosecution action governed by the existence of probable cause to initiate an original civil

[1] Excerpts of the November 29, 2017, hearing transcript are attached as **Exhibit D**.

EFTA00805444

proceeding. Of course, defamation for the complaint's allegations is barred by the absolute litigation privilege. Therefore, Edwards continually attempts to morph an element from the tort of defamation (whether any given statement pled by Epstein was true/false and made with good/bad motives)[2] and superimpose the defamation element onto his onerous burden of proving the lack of probable cause. If allowed, this would be reversible error.

Edwards' Expert is a Defamation Expert, Not a Malicious Prosecution Expert

The error is compounded by the fact that Dr. Jansen's testimony is focused on defamation per se, without regard to the actual damages proximately caused by the malicious prosecution (if any). Edwards, in this malicious prosecution action, based on the filing of an original *civil* proceeding, can only recover actual damages. (Edwards may take the position that if he has no actual damages that he is entitled to an amount of nominal damages, i.e., $1.) Dr. Jansen's testimony is not helpful to the trier of fact as required by section 90.702, Florida Statutes for *either* category of damages.

No Testimony Related to Actual Damages

Dr. Jansen did not testify about any actual proximately caused damages. Edwards' expert could not and did not opine that Edwards' reputation was harmed, that Edwards has made less money, or even that he has suffered attorneys' fees damages as a result of the original civil proceeding. Dr. Jansen candidly admitted he had performed zero research on the impact the "defamatory statements" had on any of the readership or what opinions were formed. Simply, Dr. Jansen offers nothing to assist the trier of fact or even support Edwards' claim of damages

[2] Florida Standard Jury Instruction (Civil); 405.9 Issues on Plaintiff's Claim, Defamation.

EFTA00805445

allowable under Florida Standard Jury Instructions 406.12 for malicious prosecution and Florida law (reasonable expenses, including lawyers' fees, injury to reputation, mental anguish).[3]

Expert Testimony Unnecessary for Nominal Damages

Edwards' fallback damages position is that even without actual damages, he is entitled to seek the recovery of nominal damages (i.e., $1). If even the recovery of nominal damages is allowed by this Court, Dr. Jansen's testimony is not helpful to the trier of fact on that issue.

Edwards' Admissions of No Reputational Damage

Furthermore, Edwards has testified that he has "resurrected" any damage that was done to his reputation:

> On August 17, 2012, Edwards' counsel, Jack Scarola, made a public statement to the media which he believes was "successful in discrediting Mr. Epstein's charges." (Jansen's 12/1/17 Tr. 62.) (**Ex. E**.)
>
> "With respect to reputation, I believe that over the course of the last three years I have done a pretty darn good job resurrecting any damage that was done to my reputation in this community." (Edwards' 5/15/13 Tr. 25.) (**Ex. F**.)
>
> "Do I believe that right now my reputation is better than it has been at any time in the past, yes." (Edwards' 5/15/13 Tr. 41.) (**Ex. F**.)
>
> "I have done a good job of resurrecting my reputation from the point in time where people initially believed, hey, where there is smoke there is fire or something – this guy must be guilty of something." (Edwards' 5/15/13 Tr. 56.) (**Ex. F**.)
>
> "As I said then, have I done a good job at resurrecting whatever damage was done? Yes, I did." (Edwards' 10/10/13 Tr. 233.) (**Ex. G**.)
>
> "I have not claimed an economic loss as a result of my reputation." (Edwards' 10/10/13 Tr. 238.) (**Ex. G**.)

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[3] Edwards also alleges special damages of "fear of physical injury to himself and members of his family; d. the loss of the value of his time required to be diverted from his professional responsibilities;" in his Fourth Amended Counterclaim, but these are unsupported by Florida law. (D.E. 571 at 11). *See Ware v. United States*, 971 F. Supp. 1442, 1471 (M.D. Fla. 1977) and *Burchell v. Bechert*, 356 So. 2d 377, 379 (Fla. 4th DCA 1978).

EFTA00805446

Dr. Jansen Does Not Meet Section 90.702

Dr. Jansen's testimony must be precluded because it has no relevance in this malicious prosecution action and only further stretches Edwards' flawed defamation action not pled and not allowed. Dr. Jansen admitted that he was instructed by Edwards and his counsel to look for "defamatory statements." Because Edwards' expert did not testify to damages at all, his irrelevant testimony has a real danger of confusing the jury. Simply, Dr. Jansen's opinion provides no legitimate expert testimony for the jury to consider in this action. Edwards asks this Court to strike Dr. Jansen from Edwards' expert witness list and preclude his trial testimony.

RECORD FACTS

On October 6, 2017, almost eight years after filing his Counterclaim, Edwards disclosed Dr. Jansen for the first time on his Sixth Amended Witness List with no explanation, as follows:

> EXPERT:
>
> 159. Bernard J. Jansen, Ph.D.

(D.E. 1010.) The Court's July 20, 2017, Order Specially Setting Jury Trial required the following information at the time of listing the expert:

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 reports issued by the expert regarding this case; and
5. A copy of the expert's curriculum vitae.

(D.E. 938.)

Edwards produced Dr. Jansen's report on October 20, 2017. A copy of the report is attached as **Exhibit H.** Dr. Jansen was tasked to respond to the following question:

> 9. *What is the level of dissemination of 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?*

EFTA00805447

(**Ex. H**, p. 3, e.s.)

Dr. Jansen disclosed that he simply calculated the number of internet hits which associated Edwards with Rothstein. In focusing his analysis to "online dissemination" of the defamatory statements, Dr. Jansen reached the following opinion:

> 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.*

(**Ex. H**, p. 5, e.s.)

Dr. Jansen did not even consider who was responsible for disseminating information to the press. In other words, did Epstein issue a press release? Did Edwards comment to the press? Did Edwards contact the press? Did Epstein contact the press? Simply put, who disseminated to the press the alleged defamatory statements?

Nowhere in Dr. Jansen's report does he opine on the impact to Edwards' reputation or character, nor does he mention Edwards' shame, humiliation, mental anguish or hurt feelings. Finally, Dr. Jansen does not reference how much Edwards spent on attorneys' fees in connection with the original civil proceeding.

Edwards testified at his November 10, 2017, deposition that Dr. Jansen's report was based on quantifying the number of people who had seen articles associating him with "derogatory and defamatory statements." (Edwards' 11/10/17 Tr. 285-286.) (**Ex. C**.)

Consistent with the report, Dr. Jansen testified at his deposition taken on December 1, 2017[4], that his opinion reached in this case was "that the defamatory statements against Mr. Edwards [linking] into the Ponzi scheme of Mr. Rothstein were disseminated to 74 different

[4] A copy of Dr. Jansen's December 1, 2017, deposition transcript is attached as **Exhibit E**.

EFTA00805448

media sites, in 104 different articles, to 9,665,542 daily media visitors." (**Ex. E**, p. 6.) Dr. Jansen calculated the number of times Edwards' and Rothstein's names were associated, but had no opinion regarding damages suffered by Edwards. (**Ex. E**.)

In fact, Dr. Jansen conceded he performed no research into what impact, if any, the number of publications had on anyone:

3 Q. Okay. Did you do any research to see what
4 impact the statements had on any of the readership?

5 A. No.

6 Q. Did you do any research into whether -- what
7 opinions were formed about Mr. Edwards by anyone who
8 read any of the articles?

9 A. No.

10 Q. Did you do any research into whether the
11 impact on the readership in forming an opinion about
12 Mr. Edwards was different after Mr. Scarola made his
13 statements in 2012 to the press?

14 A. No.

15 Q. When you did your research did you interview
16 any readers that actually read one of the articles that
17 you cite to in your report?

18 A. No.

(**Ex. E**, p. 64.)

Dr. Jansen could not even identify one person who actually read any of the publications:

1 Q. -- right? Can you identify one person that
2 actually read one of the 104 articles?

3 A. I didn't look for a person, so no.

(**Ex. E**, p. 65.)

EFTA00805449

Finally, although Dr. Jansen used the term "defamatory statements" and plugged in statements provided to him by either Mr. Edwards or Mr. Scarola, he never made any determination of what was defamatory or not. (**Ex. E,** pp. 7-8.) Candidly, Dr. Jansen testified:

> 15 Q. Right. So the person who made the decision to
> 16 label whatever statements you researched defamatory was
> 17 not you?
>
> 18 A. Whether they were defamatory or not was not my
> 19 decision.

Id. at 8. He clarified that, "I did an IT investigation. You're asking me kind of a legal question." *Id.* Again, Dr. Jansen confirmed his opinion had nothing to do with evaluation or analysis of whether any statement was defamatory or not:

> 22 Q. Right. Okay. And so whether or not that
> 23 statement was defamatory or not is not an analysis you
> 24 engaged in?
>
> 25 A. The defamatory part, no.

Id. at 10. If the word "defaming" was removed from his task given, it would not change his work of calculating the number of times he found statements regarding Edwards. *Id.* at 16.

APPLICABLE LAW

I. Litigation Privilege Precludes a Defamation Action Against Epstein

"The law has long recognized that judges, counsel, parties, and witnesses should be absolutely exempted from liability to an action for defamatory words *published in the course of proceedings*, regardless of how false or malicious the statements may be…." *Debrincat v. Fischer,* 217 So. 3d 68, 69 (Fla. 2017) [e.s.]. Because of this, Epstein cannot be sued for the claimed falsehood of any allegation pled in his original civil proceeding or any of the amendments filed against Rothstein and Edwards.

EFTA00805450

II. Malicious Prosecution Action Focuses on "Original Civil Proceeding" Not Hand-Picked Allegations

Because of the established litigation privilege, Edwards necessarily pled – but does not really want to try -- the tort of malicious prosecution. Although the tort of malicious prosecution has an ancient existence in the state of Florida, the elements have not changed. *Compare Tatum Bros. Real Estate & Inv. Co. v. Watson,* 109 So. 623, 626 (Fla. 1926) and *Debrincat, supra.* To prevail in a malicious prosecution action, a plaintiff must establish (1) an original civil proceeding; (2) present defendant was the legal cause of the original proceeding; (3) termination of the original proceeding constituted a bona fide termination of that proceeding in favor of the present plaintiff; (4) an absence of probable cause for the original proceeding; (5) malice on the part of the present defendant; and (6) damages as a result of the original proceeding. *Debrincat,* 217 So. 3d at 70 [e.s.].

Based on this longstanding Florida jurisprudence, there can be no narrow focus in this action on a single count, a hand-picked allegation, or a segregated paragraph in the original proceeding, or even a statement made or published in the press or on the internet to determine if it was false or true. Rather, this Court is bound by established law to focus on whether probable cause existed for Epstein to file the "original proceeding."

III. Damages in a *Civil* Malicious Prosecution Action are Not Presumed

"The gravamen" of a malicious prosecution claim "is injury to character." *Cate v. Oldham*, 450 So. 2d 224, 227 (Fla. 1984). A malicious prosecution plaintiff may recover "damages to a person, property, or reputation[] shown to have proximately resulted from a previous civil or criminal proceeding." *Tatum Bros. Real Estate & Inv. Co. v. Watson*, 92 Fla. 278, 288 (1926). Next, a malicious prosecution plaintiff may recover damages for his shame, humiliation, mental anguish, and hurt feelings. *Ware v. United States*, 971 F. Supp. 1442, 1471

EFTA00805451

(M.D. Fla. 1997)("[S]hame, humiliation, mental anguish, and hurt feelings flowing from [plaintiff's] prosecution . . . are legitimate grounds for monetary relief in an action for malicious prosecution.") (citation omitted). Third, a malicious prosecution plaintiff is entitled to the attorneys' fees he incurred in connection with the underlying action. *See Burchell v. Bechert*, 356 So. 2d 377, 379 (Fla. 4th DCA 1978) (summary judgment improper where plaintiff had incurred attorneys' fees in underlying action).

"It is basic hornbook law that, in an action for malicious prosecution, 'the plaintiff may recover all damages that are the natural and probable consequences of the action complained of,'" but "'[t]he damages must be certain and proximate and not uncertain, contingent or speculative.'" *Ware v. United States*, 971 F. Supp. 1442, 1470-71 (M.D. Fla. 1997)(citations omitted).

Moreover, unlike a criminal malicious prosecution action where a malicious prosecution for *criminal* prosecution can be actionable "per se," a plaintiff in a civil action must prove the damages sought. *See Adler v. Segal*, 108 So. 2d 773, 775 (Fla. 3d DCA 1959)(malicious prosecution action based on acquittal in underlying criminal prosecution; court held that "there is substantial authority that a malicious prosecution is actionable per se, and 'certain kinds of damage necessarily follow from the wrongful prosecution itself, and so will be assumed by the law to exist ... ."; *citing Tidwell v. Witherspoon*, 21 Fla. 359, 361 (Fla. 1885) ("'An accusation of crime under the forms of the law or a pretense of bringing a guilty man to justice is made in the most imposing and impressive manner and may inflict a deeper injury upon the reputation of the party accused than the same words uttered under any other circumstances."); *see also* Restatement (First) of Torts § 670, comment a. ("The institution of criminal proceedings necessarily carries with it a defamatory accusation of criminal conduct, and the rules which determine the right to recover for the resulting harm to reputation and distress are the same as

EFTA00805452

those applicable in actions for defamation ... ."); *compare Burchell v. Bechert*, 356 So. 3d 377 (Fla. 4th DCA 1978)(applying *Adler*'s holding but dicta because court already determined damages element met by record evidence of attorneys' fees incurred in defending the lawsuits).

A. *Dr. Jansen Failed to Provide Any Opinion on Actual Damages in a Malicious Prosecution Action*

The Florida cases cited in Section III outline the damages allowed in a civil malicious prosecution action. Dr. Jansen failed to opine on any of these categories. Significantly, Dr. Jansen offered no opinion on reputational injury because he had no knowledge regarding whether there was any impact on the readership in forming an opinion about Edwards. (**Ex. E**, p. 64.) Likewise, he offered no opinion regarding whether the original civil proceeding caused Edwards shame, humiliation, mental anguish, and hurt feelings. He had no opinion of harm to Edwards' reputation, loss of business, client departures, or any other category of potential damage. Finally, Dr. Jansen certainly had no opinion regarding Edwards incurring attorneys' fees.

Rather, Dr. Jansen performed, in his own words, an "IT investigation" simply calculating by internet searches how many times the statements given to him by Edwards or his counsel appeared. (**Ex. E**, p. 8.) This fails to meet Edwards' burden of proving malicious prosecution damages and provides no testimony helpful to the trier of fact.

B. *Dr. Jansen's Testimony Fails to Assist the Trier of Fact – if Allowed to Consider – Nominal Damages in a Malicious Prosecution Action*

Epstein by no means abandons his opposition to Edwards' argument of nominal damages in a malicious prosecution action. In fact, the Florida Standard Jury Instructions confirm Epstein's position that while "nominal" damages are awardable in a defamation action (405.10-

EFTA00805453

f.)[5], they simply do not exist in a malicious prosecution action (406.12). However, Epstein points out that if this Court allows this argument to be presented to the jury, Dr. Jansen provides no helpful testimony or opinions – none are needed for nominal damages.

IV. Section 90.702, Florida Statutes Governs Expert Witness Testimony and Dr. Jansen Fails to Meet the Threshold Requirement of Assisting the Trier of Fact or Determining a Fact in Issue

A trial court has wide discretion in determining which matters are proper subjects of expert opinion testimony. *Bryant v. Buerman*, 739 So. 2d 710, 712 (Fla. 4th DCA 1999). However, that discretion is not without limits. *Nathanson v. Houss,* 717 So. 2d 114 (Fla. 4th DCA 1998). Relevant evidence is evidence tending to prove or disprove a material fact and is generally admissible. §§ 90.401, 90.402, Fla. Stat. (2017). The concept of materiality is included within the section 90.401 definition of relevancy; the evidence must "tend to prove or disprove a material fact." *Jordan ex rel. Shealey v. Masters*, 821 So. 2d 342, 349 (Fla. 4th DCA 2002). When evidence is offered to prove a fact which is not a matter in issue, it is said to be immaterial. *Id.* Finally, "[r]elevant evidence is inadmissible if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of issues, misleading the jury, or needless presentation of cumulative evidence." § 90.403, Fla. Stat. (2017).

Edwards submits Dr. Jansen as a "damages" expert. However, Dr. Jansen fails to assist the trier of fact in understanding the evidence or in determining a fact in issue, a threshold requirement for expert testimony to be admissible. *See* § 90.702, Fla. Stat. (2017). Even if qualified in his area of expertise, for an expert's opinion to be admissible, it must tend to prove or disprove an issue in dispute. Unless Dr. Jansen's opinion is relevant to a fact or issue in the

[5] If you find for (claimant) but find that no [loss] [injury] [or] [damage] has been proved, you [should] [may] award nominal damages. Nominal damages are damages of an inconsequential amount which are awarded to vindicate a right where a wrong is established but no damage is proved.

EFTA00805454

case, it is inadmissible. *See Sunbeam Television Corp. v. Mitzel,* 83 So. 3d 865, 876 (Fla. 3d DCA 2012)("As a threshold matter, the expert's opinion must be relevant, that is, the evidence must prove or tend to prove a fact in issue."). Providing no opinions regarding actual or nominal damages, Dr. Jansen must be stricken as a witness and his testimony precluded.

CONCLUSION

Edwards has no actual damages. That is why he wants to try a per se defamation action. However, the litigation privilege is absolute and bars a defamation suit. Here, Edwards tried to use Dr. Jansen to say Edwards' reputation has been harmed by "defamatory statements" – that he found on the internet, yet he could not opine if the statements were in fact "defamatory." He could not say who disseminated the alleged defamatory statements. Importantly, Dr. Jansen cannot opine if anyone read the articles, or if the publications had any impact on the readership in forming an opinion about Edwards or if the articles caused any compensable damages. Clearly, Dr. Jansen has no relevant testimony that would be helpful to the trier of fact. Therefore, Epstein respectfully requests that this Court strike the report and exclude Dr. Jansen's testimony.

EFTA00805455

CERTIFICATE OF SERVICE

I certify that the foregoing document has been furnished to the attorneys listed on the Service List below on January 8, 2018, through the Court's e-filing portal pursuant to Florida Rule of Judicial Administration 2.516(b)(1).

LINK & ROCKENBACH, PA
1555 Palm Beach Lakes Boulevard, Suite 301
West Palm Beach, Florida 33401
[redacted] [fax]

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

Trial Counsel for Plaintiff/Counter-Defendant Jeffrey Epstein

SERVICE LIST

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

EFTA00805456

Bradley J. Edwards Edwards Pottinger LLC 425 N. Andrews Avenue, Suite 2 Ft. Lauderdale, FL 33301-3268 [redacted] *Co-Counsel for Defendant/Counter-Plaintiff Bradley J. Edwards*	Marc S. Nurik Law Offices of Marc S. Nurik One E. Broward Boulevard, Suite 700 Ft. Lauderdale, FL 33301 [redacted] *Counsel for Defendant Scott Rothstein*
Jack A. Goldberger Atterbury, Goldberger & Weiss, P.A. 250 Australian Avenue S., Suite 1400 West Palm Beach, FL 33401 [redacted] *Co-Counsel for Plaintiff/Counter-Defendant Jeffrey Epstein*	

EFTA00805457