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

CASE NO.: 502009CA040800XXXXMBAG

JEFFREY EPSTEIN,

Plaintiff,

vs.

SCOTT ROTHSTEIN, individually,
BRADLEY J. EDWARDS, individually, and
[redacted]L., individually,

Defendant,
_____/

RESPONSE IN OPPOSITION TO DEFENDANT JEFFREY EPSTEIN'S MOTION TO COMPEL BRADLEY EDWARDS TO IDENTIFY HIS TRIAL WITNESSES

Plaintiff, Bradley J. Edwards, by and through undersigned counsel, hereby files this Response in Opposition to Defendant Jeffrey Epstein's Motion to Compel Bradley Edwards to Identify His Trial Witnesses, and as grounds therefor states as follows:

Epstein's Standard for Admissibility of Witness Testimony

Although Epstein's Motion concerns the disclosure of trial witnesses, he spend much of his time arguing about the admissibility of potential witness testimony in this malicious prosecution case. In doing so, Epstein concedes that the standard for the admissibility of witness testimony in this case is as follows:

> [U]nless Edwards' listed witnesses have **personal knowledge of the matter at issue and can speak to what Epstein believed when he filed suit against Edwards**, the witnesses' testimony would be irrelevant and collateral, and thus, inadmissible, even for purposes of impeachment.

Mot. at p. 14 (emphasis added).

Thus, admissibility will turn on whether any proffered witness has personal knowledge of facts relevant to Epstein's probable cause to file the December 7, 2009 Complaint. As the Court has recognized at prior hearings, the issue of Epstein's probable cause is determined in part by the allegations contained within the Complaint Epstein filed against Edwards. Therefore, as Epstein concedes, Edwards will be permitted to put forth witnesses who have personal knowledge of facts and circumstances tending to prove whether Epstein knew that the allegations in the Complaint were false at the time he made them. In this context, both direct and circumstantial evidence of what Epstein knew will be compelling proof of what Epstein believed.

Examples of relevant allegations include:

Allegation	**Relevant Witness Testimony Admissible at Trial**
¶ 35: [Edwards] relentless and knowingly pursued flight data and passenger manifests regarding flights Epstein took with these famous individuals **knowing full well that no underage women were onboard and no illicit activities took place**	Any person who was present on flights with Epstein that included underage women who were subjected to illicit activities
¶ 42(h) [Edwards] knew or should have known that [his] three (3) filed cases were weak and had minimal value for the following reasons…	Value of Each Case (Compensatory Damages) Any person who has personal knowledge of Epstein's sexual abuse of [redacted]1., [redacted], and Jane Doe. Value of Each Case (Punitive Damages) Any person who has personal knowledge of Epstein's sexual abuse of other minor children.
¶ 42(e) After Edwards was recruited and joined RRA in the spring of 2009, the tone and tenor of rhetoric directed to cases against Epstein used by . . . Edwards . . . changed dramatically in addressing the court on various motions from	Any person who has personal knowledge of the number of children Epstein sexually abused and the system by which he recruited children for said abuse.

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being substantive on the facts pled to ridiculously inflammatory and sound-bite rich such as the July 31, 2009 transcript when Edwards stated to the Court in EW/LM: "What the evidence is really going to show is that Mr. Epstein – at least dating back as far as our investigation and resources have permitted, back to 1997 or '98 – has every single day of his life, made an attempt to sexually abuse children. We're not talking about five, we're not talking about 20, we're talking about 100, we're not talking about 400, which, I believe, is the number known to law enforcement, we are talking about thousands of children . . . and it is through a very intricate and complicated system that he devised where he has as many as 20 people working underneath him that he is paying well to schedule these appointments, to locate these girls.	

In his Complaint, Epstein relied on these allegations and others to support his "probable cause" that Edwards was engaging in abusive litigation tactics for the "sole purpose of continuing the massive Ponzi scheme." See Complaint at ¶ 30. Thus, as Epstein concedes, Edwards is entitled to meet his heavy burden of proof regarding Epstein's lack of probable cause by putting forth witnesses who have personal knowledge that, at the time Epstein made the above allegations (and others) in the December 7, 2009 Complaint, he knew they were false. Epstein knew that Edwards was pursuing the flight logs because Epstein had in fact molested underage children on planes. Epstein knew that Edwards was seeking millions and millions of dollars in compensatory and punitive damages on behalf of [redacted], [redacted]., and Jane Doe because Epstein had molested them, had used them to recruit other children for molestation, and had molested dozens and dozens

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of other children. Epstein knew the potential value of the compensatory and punitive damage claims was enormous. And he knew that Edwards' claim that Epstein had been molesting children for over a decade was not made to pump some Ponzi scheme, it was made because it was true. Epstein cannot have probable cause to make these allegations **if he knew they were false at the time he made them.**

Accordingly, although the parties disagree on many issues in this case, they do agree as to the standard for admissibility of witness testimony on the issue of probable cause. And it is the standard laid out by Epstein in his current motion.

Edwards Has Already Disclosed His Trial Witnesses as Required by the Court's Orders

On July 20, 2017, the Court entered its Order Specially Setting Trial (the "Pre-Trial Order"). In the Pre-Trial Order, the Court ordered that the parties were to exchange the "names and addresses of all trial witnesses" and the "names and addresses of all rebuttal witnesses." Contrary to Epstein's suggestion, there is no requirement that the parties identify the subject matter of each witness's testimony.

Although Epstein complains that Edwards' Witness List contains 169 witnesses[1], Epstein neglects to tell the Court that Edwards has broken those witnesses out to clearly identify who is most likely to actually be called at trial. Edwards did so pursuant to an order of the Court after Epstein previously complained about the breadth of Edwards' Witness List. Specifically, Edwards' Witness List now identifies 27 witnesses under the heading

[1] Obviously, Edwards is required to list any potential witnesses to avoid having waived his ability to call them at trial.

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"Expected to be Called at Trial" and 142 witnesses under the heading "May Be Called if the Need Arises." Of course, Edwards has filed nine (9) witness lists and four (4) rebuttal witness lists since this case began in 2009. Many of the witnesses contained on Edwards' Witness List were disclosed on those prior versions, which gave Epstein ample time to take any depositions he deemed necessary in preparing this case. Epstein chose not to do so, a litigation decision that has its pros and cons, none of which are Edwards', or the Court's, problem.

Although Epstein complains at length about the "unnecessary, excessive, abusive, and deliberately misleading" nature of Edwards' Witness List, Epstein's own Witness List identifies 58 witnesses and 9 rebuttal witnesses, yet does not break those witnesses out to identify which witnesses are "expected to be called" compared to which witnesses only "may be called if the need arises." Edwards has raised no issue with Epstein's Witness List because undersigned counsel meant what he said on March 8, 2018: Edwards is ready to try this case that has now been pending for 3,146 days. The parties had years to take discovery and to take any depositions that they believed were necessary to the preparation of this case. Epstein's counsel also announced to the Court at the March 8, 2018 hearing that they were ready to try this case. The Court should hold them to their word, and dismiss this claimed "prejudice" argument for what it is: another attempt to engage in endless motion practice and to delay the trial in this case until the twelfth of never.

If Epstein Believes None of the Witnesses Have Admissible Testimony, He Has Nothing to Worry About

Epstein's Motion claims that "[m]ost of the listed witnesses have no personal knowledge concerning Edwards' malicious prosecution claim against Epstein or Epstein's

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probable cause for filing and continuing his proceeding against Edwards." Mot. at p. 1. If that is true, and it must be Epstein's position because he neglected to take any depositions of the witnesses he complains of, then Epstein has nothing to worry about. Surely, this Court is not going to permit Edwards to present witnesses with no personal relevant knowledge. It is therefore hard to understand Epstein's claim of prejudice.

Finally, Epstein's request for Edwards to disclose a detailed summary of the substance of each witness's testimony is nothing more than an attempt to invade undersigned counsel's mental impressions and make up for what Epstein's current counsel perceives to be inadequacies in the pretrial conduct of Epstein's prior counsel. Undersigned counsel's trial strategy is absolutely protected by Florida's work-product privilege, and Epstein's attempt to invade that privilege to cure any purported defect in the defense's preparation of this case should be rejected. See Northup v. Acken, 865 So. 2d 1267, 1270 (Fla. 2004) ("Personal views of the attorneys as to how and when to present evidence, his evaluation of its relative importance, **his knowledge of which witness will give certain testimony** . . . come within the general category of work product.") (emphasis added).

Conclusion

For the foregoing reasons, Epstein's Motion to Compel Edwards to Identify His Trial Witnesses should be denied.

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I HEREBY CERTIFY that a true and correct copy of the foregoing was sent via E-Serve to all Counsel on the attached list, this 19th day of July, 2018.

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