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 RESPONSE IN OPPOSITION TO EDWARDS' MOTION FOR SANCTIONS FOR VIOLATION OF COURT ORDER AND THE INTERVENORS' JOINDER

Plaintiff/Counter-Defendant Jeffrey Epstein ("Epstein") responds in opposition to Counter-Plaintiff Bradley J. Edwards' ("Edwards") April 3, 2018, Motion for Sanctions for Violation of Court Order[1], and the Intervenors' April 7, 2018, Joinder and states:

INTRODUCTION

In order to justify his Motion for Sanctions, Edwards concocts a patently absurd construction of this Court's verbal ruling on March 8, 2018, incorrectly asserting that the Court prohibited Epstein from referring, in any way, to the 27,000+ pages contained on the Fowler White CD. His claim is that Epstein violated this Court's ruling the four times Epstein "referenced" the documents at issue in one filing with this Court and three with the Fourth District Court of Appeal. Obviously, however, Epstein's general references to documents could not possibly have violated the Court's ruling. Edwards' Motion is just another attempt to derail an *in camera* review of

[1]A written Order has not been issued on the Court's March 8, 2018, rulings.

documents wrongfully withheld by Edwards, which review is critical to ensure a fair and complete examination of all relevant evidence in this case. The Court's ruling was never meant to be the gag order Edwards would ask this Court to impose. If it were, not only would Epstein never be able to seek appellate review concerning the Court's striking of the exhibits (a review which this Court expressly contemplated as part of its ruling)[2] or defend himself in the Bankruptcy Court proceedings initiated by Edwards, but Edwards, himself, would be in violation of the Court's ruling by his reference to the e-mails in filings in this Court, the Appellate Court and the Bankruptcy Court. Epstein has complied fully with this Court's March 8, 2018, in-court rulings. The disc is sealed, the 47 exhibits (also referred to as "e-mails") are sealed and no further dissemination by Epstein or his attorneys has occurred.

The issue of compliance by Fowler White and/or Epstein with the Bankruptcy Court's November 2010 Agreed Order, issued by the Honorable Raymond B. Ray (the "November 2010 Agreed Order"), is squarely and appropriately before the court that issued the Order – the United States Bankruptcy Court for the Southern District of Florida. The November 2010 Agreed Order was also not a gag order and this Court's rulings on confidentiality did not flow from it. Rather, the November 2010 Agreed Order outlined how Fowler White would print copies of documents to be produced in response to Epstein's Subpoena directed to the Bankruptcy Trustee. Pursuant to that Order, Fowler White was not to retain any copies of the documents contained on the disc or any images of the documents in the memories of its copiers. Importantly, the Bankruptcy Court is not making any determinations on the relevance of the documents contained on the disc or if there are any privileges applicable to the documents. Rather, the Bankruptcy Court is only tasked

[2]*See* March 8, 2018, Afternoon Hearing Transcript, 62:6-12 (Court allowed Epstein to file the exhibits under seal to protect his appellate rights). (**Exhibit A**.)

with finding whether Fowler White or Epstein retained any copies of the documents contained on the disc or any images of the documents in the memories of Fowler White's copiers.

Following a preliminary hearing held on April 13, 2018, in the Bankruptcy Court, Judge Ray ordered discovery that is focused on the allegations of federal civil contempt relating to the alleged violations of the November 2010 Agreed Order. Specifically, Edwards may take the depositions of (1) Fowler White's representative about the chain of custody of the discovery documents; (2) Epstein about his knowledge or possession of the disc or documents pre-2018; and (3) Link & Rockenbach, PA's representative about the chain of custody of the disc. The November 2010 Agreed Order and Judge Ray's subsequent 2018 Show Cause Order are being considered by Judge Ray.

Edwards' Motion focuses on the 27,000+ pages contained on the disc. However, this Court recognized that not all of the documents contained on the disc were subject to Edwards' claimed privilege and that, in fact, many thousands of pages from the disc have already been produced in the case (including more than 80 documents produced by Edwards that were listed on his privilege log). Thus, the Court expressly stated that its ruling was only applicable to the 47[3] exhibits that Edwards identified as privileged. (3/8/18 Aft. Tr. 76:8-21.) Moreover, the Court never stated that such exhibits could not be generally referenced in pre-trial or appellate proceedings. Rather, the Court made it clear that it was prohibiting any reference to or use of the exhibits *at the trial*. (3/18/18 Aft. Tr. 75:24-76:6.) This, of course, makes sense because the Court was not making, and has not made, a ruling as to whether any of the 47 exhibits are protected by any privilege. The

[3]The Court incorrectly referenced 45 exhibits. Edwards claimed it is 49 exhibits, but two of the Bates numbers he referenced were pages contained within another exhibit, making the total 47 exhibits which are in dispute.

Court expressly ruled only that the exhibits were untimely and the Court was not going to conduct an *in camera* review three days before trial.

To date, the oral rulings made by this Court at the March 8, 2018, hearing have not been reduced to a written Order. To be clear, however, Epstein has fully complied with the Court's rulings. In fact, it was Epstein's current counsel who: (1) disclosed the chain of custody of the disc and the limited disclosure of documents to Epstein; (2) immediately cooperated and assisted Edwards in sealing docket entries 1242 and 1252; (3) filed Notices of Compliance setting forth the steps taken to comply with the Court's rulings; and (4) after the Fourth District Court of Appeal's stay was partially lifted, moved to file the disc and the 47 exhibits under seal and obtained an Agreed Order allowing the sealing. Epstein and his current counsel have completely complied with this Court's rulings regarding the disc and the 47 exhibits.

Edwards' argument that this Court prohibited general references to even assertedly privileged documents in any context other than at trial is completely nonsensical. Even a privilege log required under Florida's Rules of Civil Procedure as a condition to withhold documents on the basis of privilege must sufficiently identify the specific documents withheld with enough detail to facilitate the evaluation of and challenges to the privileges asserted therein. *TIG Ins. Corp. v. Johnson*, 799 So. 2d 339 (Fla. 4th DCA 2001); *Abbott Laboratories v. Alpha Therapeutic Corp.*, No. 97-C-1292, 2000 WL 1863543 (N.D. Ill. Dec. 14, 2000). Moreover, none of the general references for which Edwards would have Epstein sanctioned violated any privileges or contain, even arguably, confidential information. *See* paragraphs 12, 14 and 17 of Edwards' Motion identifying Epstein's alleged violation. And the issue of whether any of those documents is even privileged has never once been determined by this or any other court. Accordingly, for these reasons, Edwards' sanctions Motion has absolutely no merit.

If, in fact, Edwards believes that he has "nothing to hide" in the e-mails, then Epstein urges Edwards to agree *post haste* for the Court to determine *in camera* whether any privilege or work-product protection exists as to the 47 exhibits. These 47 exhibits go to the very heart of Edwards' disingenuous allegation that there was a complete absence of probable cause for Epstein to sue Edwards, and they readily defeat Edwards' claim of purported damages! Edwards nevertheless withheld them and concealed their existence through the device of a deliberately vague and legally non-compliant privilege log. No court has ever reviewed the 47 exhibits *in camera* and determined if, in fact, any are protected or if (as Epstein is confident such a review will confirm) they should be subject to the light of the courtroom in this civil action against Epstein. Edwards seeks millions of dollars for claimed reputational damage; these e-mails demonstrate the falsity of Edwards' claim that he was hurt by Epstein's lawsuit and that Epstein had no reasonable basis to allege that Edwards was involved in Rothstein's Ponzi scheme using the tort claimants' cases.

Finally, Epstein urges this Court to recognize that Edwards' moving to prevent Epstein from discussing the exhibits generally – which in essence would mean Epstein cannot seek an *in camera* review or reference the exhibits in these proceedings or even in appellate proceedings -- is simply another transparent attempt by Edwards to hide the truth. Edwards asked the Fourth District Court of Appeal to strike general statements made in briefing in before it on the basis that Epstein violated this Court's ruling. The Fourth District Court of Appeal, however, rejected Edwards' attempt to strike Epstein's statements that the e-mails are case-ending and defeat Edwards' malicious prosecution claim against Epstein. This Court should similarly reject Edwards' arguments and deny his Motion for Sanctions.

THE COURT'S MARCH 8, 2018, HEARING

On March 8, 2018, the parties attended a special set hearing on a number of pending Motions, including Edwards' Motion to Strike Epstein's Untimely Supplemental Exhibits and to Strike all Exhibits and Any Reference to Documents Containing Privileged Materials Listed on Edwards' Privilege Log. Because the trial was only three business days away, the Court found that Epstein's then recently identified exhibits[4] were untimely and, because of that, the Court did not have sufficient time to conduct an *in camera* inspection to evaluate Edwards' privilege assertions.

At that hearing, this Court recognized that the jurisdiction over the November 2010 Agreed Order was that of the Bankruptcy Court:

> But they're not coming in here, and I would hope elsewhere, if it's going to be at the sacrifice not only as to the orderly administration of justice, but *also in derogation of a federal bankruptcy court's order or any court of recognized jurisdiction's order* that would have the necessary supervisionary control of a given case, but also at the potential extermination or derogation of a privilege. And for all of those reasons is why I am extremely reluctant to start taking these things into consideration just a few days prior to trial.

(3/8/18 Aft. Tr. 54:9-20) (emphasis added).

This Court's rulings were focused on not allowing Epstein to use the late-disclosed exhibits at trial, including referencing the stricken exhibits at trial, and to sealing the disc and the alleged privileged 47 exhibits to protect Epstein's appellate record:

> MR. SCAROLA: Your Honor, may we include in the order a direction that opposing counsel is required to relinquish possession of all copies of the privileged documents to the Court under seal?

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[4]Epstein made a rolling production of his newly disclosed exhibits (which fell into general categories) to Edwards on February 2, 2018, February 16, 2018, and March 2, 2018. Epstein then individually identified each of those exhibits according to the Clerk's pre-marking guidelines on his March 5, 2018, Clerk's Trial Exhibit List.

> THE COURT: Well, the only thing that obviously has to be taken into consideration is the appellate rights of Mr. Epstein and how they're going to preserve those rights in light of the fact that the Court has rejected the last-minute request for in-camera inspection for the reasons that I've already stated at length on the record.

(3/8/18 Aft. Tr. 62:2-12.)

The Court wanted to ensure that Epstein did not either use the alleged privileged documents at trial or refer to their contents, thereby getting information in by the "back door":

> Mr. Epstein will be barred from referring to any of those records as it relates to the documents that were gathered from Fowler White or from any other source that would have included those records that were the subject of Judge Ray's order. So it's to preclude anything coming in through the back door which wouldn't be allowed through the front.

(3/8/18 Aft. Tr. 75:24-76:6.)

Both the Court and Edwards' counsel accepted Epstein's counsel's representations of who the alleged privileged documents were shared with and that the documents would not be further disseminated:

> … no further dissemination is going to be made. I think that goes without saying as far as the attorneys are concerned. … I have no doubt in my mind that they will all be respectful of the court order of non-dissemination of any of those documents hence forth.
>
> And Mr. Link [Epstein's counsel] has already represented to the Court that other than Mr. Epstein and his co-counsel, that there have been no eyes laid upon these documents. Hence, **I'm accepting that representation, as Mr. Scarola has accepted those representations** during the hearing as well.

(3/8/18 Aft. Tr. 78:9-25) (emphasis added).

Paul Cassell, the Intervenors' counsel, asked that a similar representation be made by Fowler White. In response, the Court referenced a "blanket confidentiality order" to clarify that Fowler White and Epstein's other former counsel were included in the non-dissemination ruling:

> As a general blanket order I would simply say that all attorneys who have or are representing Mr. Epstein shall be subject to this order of confidentiality, of sealing and of non-dissemination of ***any such information that is contemplated in any of the documents*** that are part of the umbrella order of Judge Ray. And that would include all of the exhibits that we spoke about today and that have been filed as a matter of record.

(3/8/18 Aft. Tr. 79:9-18) (emphasis added). But even this clarification was focused on the non-dissemination of the specific confidential information contemplated in the documents. It certainly did not preclude a general reference to their existence. Nor does a reference to their devastating impact on Edwards' cause of action reveal the specific information contemplated in the documents and violate this blanket order.

While it is understandable that Edwards does not want the truth to be known, the "blanket confidentiality order" was not meant as a gag order to ensure that even a general reference to the 47 exhibits would not be made in this proceeding pre-trial, in the Bankruptcy Court proceeding or in the appellate court proceedings. Rather, it was made to ensure that the documents that Edwards has claimed are privileged are not used at trial or disseminated further until further order of this Court.

ARGUMENT

General Adjective Argument is Not Disclosure

Edwards' examples of alleged violation fall far short of explicit disclosure. Edwards referenced the following alleged improper statements made by Epstein in court filings:

> Second, the alleged eight-year-old "confidential" information to which Edwards refers is 47 exhibits comprised of a series of communications between Edwards and other attorneys, including Scott Rothstein, **that eviscerate Edwards' case against Epstein in its entirety** . . . Moreover, on their face, all of these eight-year-old communications clearly show that Edwards' claims of work product simply do not apply. **These inculpatory communications cannot constitute work-product.** They directly relate to issues that

> Edwards himself has made central to this case and their content provides independent grounds to reject work product protection, including both the **crime fraud exception and potential unprofessional conduct . . . <u>the trial court refused to evaluate these issues, choosing instead to exclude the communications on the basis of what the Court believed was Epstein's untimely request to identify them on his Exhibit List</u>.** (Motion p. 12.)

> Included among those issues to be perfected at the trial court is Edwards' errant claim of "privilege" which remains a cloud below preventing the **admission of crucial evidence that Epstein maintains is dispositive of this case. That evidence must be reviewed in camera by the trial court while the appellate issues are under review.** Consistent with this Court's interest in "fairness" and "efficient use of the **trial court's time and resources**," Epstein will be narrowing his request for *in camera* review down from 27,000 pages to a readily manageable fraction, 47 exhibits numbering approximately 100 pages. (Motion p. 14.)

> Recent events (appeal and stay) and the discovery of e-mails that total [sic] eviscerate Counter-Plaintiff Bradley J. Edwards' ("Edwards") claims and shines a light on his true motivation have prompted unprofessional behavior from Edwards and his counsel evidenced by the unilateral setting of hearings, certificates of conferring that never happened and intentional ex parte attendance at a hearing despite knowing of Epstein's counsel's unavailability. (Motion p. 17.)

None of these statements evidence disclosure of the contents of any documents Edwards deems are privileged but, rather, they are made in connection with requests for judicial relief. If merely referencing the documents' existence is a violation of the Court's ruling, then Edwards, himself, violated it with the filing of his Motion for Sanctions citing the alleged statements and by filing his Motion for Order to Show Cause in the Bankruptcy Court.

Not once has Epstein or his counsel violated this Court's rulings. Instead, Epstein made appropriate general statements about the *nature* of the documents and their impact on Edwards case – consistent with this Court's own recognition in open Court that the documents are "detrimental" to Edwards' case:

> And I understand what you're going to tell me because I've gotten a flavor for some of these documents that have been provided. … And that is that they are detrimental to the position taken by Mr. Edwards and that they are helpful to the position taken by Mr. Epstein.

(3/8/18 Aft. Tr. 51:23-52:5)(emphasis added). If the Court's ruling prohibits general statements about the e-mails, including that they are "detrimental" or "case-ending" to Edwards' malicious prosecution action, even in court filings, then Epstein's counsel would be prevented from advancing any argument for an *in camera* review or other relief with respect to the e-mails in this Court or the appellate court or from defending himself in the Bankruptcy Court. Edwards' ludicrous interpretation of this Court's ruling as a blanket gag order would effectively impede discharge by Epstein's counsel of their ethical duties to zealously advocate for Epstein. The Court's ruling contains no express statement to justify substantial interference with counsel's ethical duties in their representation of a client; nor could this Court ever have intended it to be interpreted that way.

Epstein Has Fully Complied with this Court's Ruling

If the basis for Edwards' sanctions Motion is a violation of only this Court's oral rulings (and not the November 2010 Agreed Order), then Edwards' sanctions Motion is equally unjustified. At most, this Court prohibited Epstein and his counsel from disseminating the specific information contemplated in the 47 exhibits Edwards improperly claims are privileged. However, Epstein has not disseminated, quoted or specifically referenced the contents of any of the 47 exhibits. Epstein's general references to the e-mails disclose nothing confidential contained therein. Thus, Epstein has assuredly not violated the Court's oral rulings.

Edwards bases his claims of sanctionable violations on general references to assertedly privilege materials which he never properly supported with a legally sufficient and *TIG*-compliant privilege log. Ironically, had Edwards provided a legally sufficient privilege log, based on

Edwards' nonsensical interpretation of this Court's rulings, even the limited descriptions legally required to withhold the 47 exhibits contained therein would be a violation of this Court's rulings. The general references to the 47 exhibits for which Edwards seeks sanctions are far less specific than the descriptions which Edwards was required, but failed, to provide in a legally sufficient privilege log.

To the contrary, Epstein has fully complied with the Court's rulings. It was Epstein who – without hesitation – agreed to the sealing; worked with Edwards' counsel to obtain an Agreed Order sealing the docket entries, disc and exhibits; and then filed Notices of Compliance. Epstein has not once disclosed the case-ending e-mails in the press, or to others, or, after the March 8, 2018, hearing, expressly stated their content in any pleadings before this or any other court! Ignoring all of this, Edwards simply seeks a gag order on the truth.

Fourth District Court of Appeal Denied a Similar Request from Edwards

In his Motion to this Court, Edwards argues that no less than four times Epstein referenced the alleged privilege exhibits in filings with both this Court *and* the appellate court. Conveniently for Edwards, he neglects to disclose to this Court that he also sought to strike references to the 47 exhibits from Epstein's appellate filings on these same grounds, and the Fourth District Court of Appeal denied Edwards' requested relief in both cases without even requiring Epstein to respond. *See* April 5, 2018, Order, *Epstein v. Rothstein and Edwards*, 4th DCA Case No. 4D18-0762; April 6, 2018, Order, *Epstein v. Rothstein and Edwards*, 4th DCA Case No. 4D18-0787. **(Composite Exhibit B.)**

CONCLUSION

Epstein has fully complied with this Court's rulings at the March 8, 2018, hearing and has not disseminated the 47 exhibits that were the subject of those rulings or any of the specific information contained in those documents. Epstein's general references in pre-trial filings with this Court and in the Fourth District Court of Appeal to the 47 exhibits in question do not in any way violate the Court's March 8th rulings. The issue of Fowler White's and/or Epstein's compliance with Judge Ray's Bankruptcy Court November 2010 Order is squarely before Judge Ray as a result of Edwards' separate motion before that court and should not be adjudicated a second time by this Court. The Fourth District Court of Appeal has already denied Edwards' separate motions to strike Epstein's references to the 47 exhibits based on asserted violations of this Court's rulings, which should dictate a similar response by this Court to the instant motion. Furthermore, any consideration of sanctions against Epstein arising from Epstein's disclosure of any allegedly attorney-client privileged and/or work-product protected information contained in any of the 47 exhibits necessarily requires an evaluation of whether any such privilege or work-product protection actually exists, and, if so, to what extent it was invaded by such disclosure. Epstein vehemently denies that any attorney-client privilege or work product protection applies with respect to the 47 exhibits, and neither this Court nor any other has ever affirmatively determined that any such privilege or protection exists. Absent an affirmative determination that the 47 exhibits are subject to attorney-client privileges or work product protection, there is simply no basis for an award of sanctions against Epstein for making general references to those 47 exhibits. For all of these reasons, Edwards' Motion for Sanctions and the Intervenors' Joinder are improper and must be denied.

CERTIFICATE OF SERVICE

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

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