IN THE CIRCUIT COURT OF THE 15TH JUDICIAL CIRCUIT IN AND FOR PALM BEACH COUNTY, FLORIDA

COMPLEX LITIGATION FLA.R.CIV. P. 1201

CASE NO. 50 2009CA 040800XXXXMB AG

JEFFREY EPSTEIN,

Plaintiff,

v.

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

Defendants.
_____/

PLAINTIFF'S RESPONSE IN OPPOSITION TO DEFENDANT EDWARDS' MOTION FOR SUMMARY JUDGMENT AND PLAINTIFF'S MOTION TO STRIKE SUPPORTING EXHIBITS AND ATTACHMENTS WITH INTEGRATED MEMORANDUM OF LAW

Plaintiff, Jeffrey Epstein ("Plaintiff") opposes the Motion for Summary Judgment of Defendant Bradley J. Edwards ("Edwards"), filed pursuant to Rule 1.510 of the Florida Rules of Civil Procedure, and moves to strike the unsworn and otherwise unauthenticated "Exhibits" and "Attachments" to the allegedly "Undisputed Statement of Facts" upon which Edwards relies to support the Motion for the following reasons:

I. PRELIMINARY STATEMENT

References to pleadings in *Jeffrey Epstein v Scott Rothstein, individually and Bradley J. Edwards,* Palm Beach Circuit Court Case No. 50 2009 CA 040800XXXMBAG shall be (Plaintiff [redacted]._____). References to pleadings in the *In re: Rothstein Rosenfeldt Adler,* [redacted]., in the United States Bankruptcy Court, Southern District of Florida, Case No. 09-34791-RBR – Chapter 11,

shall be (RRA [redacted]._____). References to depositions will be (Deponent's Name: p. _____). References to the exhibits in Plaintiff's accompanying appendix to this Response will be (A: ____). Unless otherwise noted, Plaintiff has supplied all emphasis in this Response.

II. STATEMENT OF THE CASE

A. Epstein v. Edwards

On December 7, 2009, Jeffrey Epstein filed his Complaint against Bradley J. Edwards and Scott Rothstein, seeking damages based on a scheme involving marketing investments in lawsuits brought against the Plaintiff. Edwards filed his Answer and Counterclaim for Abuse of Process on December 21, 2009. After motions directed to the pleadings were resolved, discovery by both sides commenced in March 2010. On April 16, 2010, Plaintiff issued a subpoena duces tecum to the trustee for the former law firm of Rothstein Rosenfeldt and Adler, [redacted]. ("RRA"), now in a Chapter 11 proceeding in the Bankruptcy Court for the U.S. District Court for the Southern District of Florida. The subpoena sought records necessary for the Plaintiff to prove his claims against the Defendants. Since the scheme originated and took place within the law firm of RRA and since the Plaintiff was not physically present to learn of the conversation about the scheme directly, witness the presentation of RRA litigation files to investors, or obtain email or other written communications to and from the RRA and the investors, the records are critical to his case and otherwise unavailable to the Plaintiff to obtain relevant discovery related to his claim. The specific details of Plaintiff's efforts to obtain the documents of that subpoena are set forth in the following section.

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Based on Defendant *Edwards'* motion, not the Plaintiff's, on April 15, 2010, this court set this matter for jury trial beginning October 25, 2010. On June 10, 2010, the undersigned law firm was substituted for prior counsel of the Plaintiff.

The court has conducted two status conferences on this case, one on August 20, 2010 and another on October 20, 2010. At each conference, counsel for the Plaintiff has continuously advised the court of the Plaintiff's efforts to obtain necessary documents to proceed with further discovery to establish his claims against the Defendants. As a result of matters raised at the status conferences, a motion to continue was filed and granted, with the court resetting this case for trial for an eight week docket beginning March 7, 2011 with a calendar call for February 25, 2011.

At the present time, only the depositions of Jeffrey Epstein and Bradley J. Edwards have taken place, because of the inability of the Plaintiff to obtain the documents subpoenaed from the trustee for RRA. The depositions of Michael Fisten, Russell Adler, Scott Rothstein, Ken Jenne, Gary Farmer, Debra Villegas, A.J. Discala, Thane Richie, Michael Legamaro and Dean Kretschmar are scheduled to begin January 19, 2011 through and including February 4, 2011, subject to confirming availability of witnesses and counsel. However it is most practical to take these depositions, *after* the Plaintiff has received the documents from the Trustee. This inability to obtain the documents subpoenaed more that eight months ago, accounts for part of the delay in setting the depositions, particularly since in at least two instances, the witnesses are or are about to be in federal prison.

As will be shown below by the procedural history of this case, the court will see an intentional effort by Defendant Edwards to delay the Plaintiff from obtaining the necessary

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discovery to respond to this motion on the one hand and a concerted effort, on the other hand, by the Defendant Edwards to advance the hearing on the Motion for Summary Judgment and to advance this matter for trial *before* the Plaintiff can conduct basic discovery.

B. RRA Bankruptcy- Efforts to Get Records.

On May 18, 2010, Judge Raymond Ray, Bankruptcy Judge for the United States Bankruptcy Court for the Southern District of Florida ("Bankruptcy Court") entered an order that established the process for anyone wishing to obtain discovery from the trustee. The operation of the order was not limited to parties in the bankruptcy case. Further, the Bankruptcy Court determined it had jurisdiction and retained jurisdiction with respect to all matters arising from or related to the implementation or the interpretation of its order without any limitation on the form (A:1).

On July 14, 2010, Plaintiff filed a Motion to Compel Production of Documents from the trustee pursuant to the document production protocol established by the aforesaid order (A: 2).

On August 4, 2010, the Bankruptcy Court conducted a hearing on Plaintiff's motion to compel and entered an order on August 13, 2010 appointing former Broward County Circuit Court Judge Robert Carney as special master to review the documents responsive to the Plaintiff's subpoena served on the trustee, to determine the applicability of any privileges asserted by [redacted]., Bradley Edwards, or other former clients of Farmer Jaffee, where the Edwards presently works, and to prepare a privilege log. The Plaintiff, without objection agreed and was ordered to pay the legal fees and costs incurred by the special master in the preparation of this log (A :5). Prior to the hearing, two motions in opposition were filed by Farmer Jaffee (A: 3&4).

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Subsequently, on October 13, 2010, the special master filed a motion seeking clarification of the order appointing him (A: 7). Farmer Jaffee filed another motion in opposition (A: 8&9). A hearing took place and an amended order was entered, which allowed Farmer Jaffee to review and assist in the preparation of the privilege log (A: 10). Farmer Jaffe received a portion of the electronically stored data on October 17, 2010 and were required to prepare a detailed privilege log within thirty (30) days of receipt of the compact disk i.e., on or before November 15, 2010, at their cost (A: 10).

On November 2, 2010, [redacted]. and Bradley Edwards filed a Motion for Relief from the amended order and sought to have the Plaintiff pay for the production of all documents and fees associated with the privilege log, which previously had been ordered by the court for Farmer Jaffe to pay. In addition, Farmer Jaffe and Edwards asked for more time (A: 12). As a result of the motion, an agreed order was entered granting additional time, and the Plaintiff agreed to pay the cost of making physical copies of the documents on the compact disks for the purpose of making it more convenient for Farmer Jaffee to prepare the privilege log (A: 13).

Even though Farmer Jaffee had received one compact disk on October 19, 2010 and received another compact disk on or about November 15, 2010 from the trustee, on December 16, 2010 they filed an emergency motion, after agreeing to the order granting additional time, not only for an extension of time but also for a stay in the preparation of the privilege log pending their motion for summary judgment to be heard by this court (A: 16). Edwards filed a similar motion with this court which is presently set for hearing on January 27, 2011.

On December 21, 2010, the Bankruptcy Court conducted a hearing and entered an order

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allowing through January 31, 2011 for the privilege log to be prepared (A: 17).

III. LEGAL STANDARD FOR GRANTING OR DENYING MOTIONS FOR SUMMARY JUDGMENT

A. General Standards

In order to prevail, Edwards must meet two prerequisites and show: (1) the nonexistence of a material factual issue, and (2) entitlement to judgment as a matter of law. Fla. R. Civ. P. 1.510(c), (2006).

In Florida, the party moving for summary judgment must conclusively demonstrate the nonexistence of an issue of material fact, and the court must draw every possible inference in favor of the party against whom summary judgment is sought. Summary judgments should be cautiously granted, and the trial court should not enter summary judgment unless the facts are so crystallized that nothing remains but questions of law. If the evidence will permit different reasonable inferences, it should be submitted to the jury as a question of fact, and summary judgment should not be granted. *McCraney v. Barberi*, 677 So. 2d 355, 357 (Fla. 1st DCA 1996); *Albelo v. Southern Bell*, 682 So.2d 1126, 1129 (Fla. 4th DCA 1996). Finally, summary judgments are not favored. *O'Connor v. Marston*, 717 So. 2d 82 (Fla. 5th DCA, 1998).

It is also necessary for the movant to authenticate the undisputed facts upon which its claim for summary judgment is based. Most of the facts and assertions contained throughout Edwards' motion are unauthenticated and cannot form the basis for any summary judgment. Fla. R. Civ. P. 1.540; *Bifulco v. State Farm Mutual Automobile Insurance Co.*, 693 So.2d 707 (Fla. 4th DCA 1997).

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Finally, summary judgment should not be granted until all discovery has been completed. *Sica v. Sam Caliendo Design, Inc.*, 623 So.2d 859 (Fla. 4th DCA 1993).

B. The Motion is Legally Insufficient

On September 22, 2010, Edwards served a Motion for Summary Judgment (the "Summary Motion") seeking to have this Court conclude that there is no genuine issue of material fact as to each count against him and to grant him judgment on the claims raised against him by Plaintiff in this action. Edwards filed a 37-page "Statement of Undisputed Facts," consisting of 120 separate paragraphs, most of which are either not material at all or, where they are conceivably material, they *are* disputed. Arguably, only paragraphs 86 through 91 bear on the subject of this lawsuit.[1]

In support of these 120+ allegedly "undisputed" facts, Edwards served an eight inch tall stack of "47 exhibits" and 22 "attachments" numbered respectively from "A" to "UU" and "1" to "22". Collectively, we refer to these materials as the "Supporting Papers".

Among these Supporting Papers are 22 transcripts of depositions or excerpts of depositions – the "Attachments," most of which were taken prior to the filing of this action in 2009 and before. The other "Exhibits" are a compendium of *unsworn* letters, pleadings and other court filings, hearing transcripts, an unauthenticated copy of what purports to be a plea agreement between Scott Rothstein and the government,[2] unsigned drafts, unsigned answers to interrogatories from another

[1] Nevertheless, Edwards fills 35 pages with facts that are not material to any issue in this case for the apparent purpose of prejudicing Plaintiff in this Court with a gratuitous and graphic recount of alleged conduct not in issue in *this* case, such as Plaintiff's alleged sexual exploits with clients of Edwards. There can be no other reason, since the Plaintiff has not placed those matters in issue.

[2] See Exhibit "SS." The statement of facts incorporated into the plea agreement refers throughout to

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case, New York Post and other media publications, items (such as phone messages) allegedly garnered from Plaintiff and others pursuant to search warrants in criminal investigations of Plaintiff, a purported copy of a visitor log from the Palm Beach County Sheriff's Office, flight logs, and other documents the materiality of which is not facially apparent.[3]

All of the Supporting Papers, except Exhibits "N," fail to conform to the Florida Rules of Civil Procedure and must be stricken.[4] The Supporting Papers have not been certified, verified or properly authenticated.

The law in the Fourth District, as well as in Florida's other courts of appeal, clearly and unconditionally provides that unauthenticated documentary evidence may *not* be relied on or considered in support of a motion for summary judgment. *See Hollywood Towers Condo. Ass'n, Inc. v. Hampton*, 993 So. 2d 174, 175-176 (Fla. 4th DCA 2008) (unauthenticated photocopies of check, letter and bank statement attached to motion for summary judgment could not be used to

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Rothstein and "other co-conspirators" without naming those others. It intimates that others working at RRA knew of the Ponzi scheme and conspired to advance the criminal enterprise. Plaintiff believes Edwards is such a person, notwithstanding Edwards' production of an unsworn form letter from a federal victim witness specialist identifying him as a possible victim of Rothstein (exhibit "TT"), but has not yet been provided the documentary evidence he has been seeking to use against Edwards.

[3] For example, Attachment "1" purports to be a 183-page deposition of Plaintiff in a case styled [redacted] *v. Jeffrey Epstein* then pending in this Court, but the copy of the transcript is not signed and certified by the court reporter or otherwise authenticated and is therefore inadmissible. Attachment "2" consists of an excerpt of 9-pages of the purported transcript of a deposition of a Jane Doe which apparently in its entirety is more than 568 pages in length. Edwards included those pages to support the statement that Jane Doe was abused at least 17 times. It actually does not support that statement, but regardless, the excerpt is not in any way authenticated. Attachments 3 through 22 suffer from the same defect. The exhibits with the exception of "N" are no better.

[4] This exhibit is the Affidavit of Defendant Edwards which appears to have been sworn in conformance with Florida Statutes, although much of what is sworn to is immaterial or disputed. Attachment 15 is not certified, appears to be a complete transcript (not an excerpt) and bear the signature of a court reporter, but it hardly material. *See* Statement of Undisputed Facts at paragraph 57. Exhibit "QQ" is a sworn affidavit; however, it consists almost entirely of hearsay and double hearsay and must be stricken.

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support motion); *Bifulco v. State Farm Mut. Auto. Ins. Co.*, 693 So. 2d 707, 710 (Fla. 4th DCA 1997) (trial court could not consider unsworn or uncertified insurance documents attached to motion for summary judgment); *Mack v. Commercial Indus. Park, Inc.*, 541 So. 2d 800 (Fla. 4th DCA 1989) (contractual exhibits which were unaccompanied by an affidavit could not be considered in support of motion for summary judgment).[5] In *Bifulco,* the court of appeal observed:

> [I]t is unquestionably clear that the documents attached to Appellee's motion are not sworn to or certified in any manner whatsoever, nor are they in proper admissible form. They are not accompanied by any affidavit of a records custodian or other proper person attesting to their authenticity or correctness. . . . They were received without any foundation other than the representations of Appellee's counsel. In short, *Rule 1.510(e), by its very language, excludes any document from the record on a motion for summary judgment that is not one of the enumerated documents or is not a certified attachment to a proper affidavit. The documents in question in the case before us, standing by themselves, are insufficient to satisfy the heavy burden Appellee must meet in order to justify the granting of summary judgment in its favor.*

693 So. 2d at 710.[6]

Here, it is unquestionably and undeniably clear that *none* of the Supporting Papers, save

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[5] Other courts of appeal have held the same. *See, e.g., Nichols v. Preiser*, 849 So. 2d 478, 481 (Fla. 2d DCA 2003) (trial court could not consider letters that were not sworn or certified); *First Union Nat'l Bank of Fla. v. Ruiz*, 785 So. 2d 589, 591 (Fla. 5th DCA 2001) (unsworn EEOC letter did not satisfy procedural strictures inherent in Rule 1.510(e)); *Brooker v. Sarasota, Inc.*, 707 So. 2d 886, 887 (Fla. 1st DCA 1998) (trial court could not consider unauthenticated document in ruling on motion for summary judgment).

[6] Rule 1.510(e) requires that "[s]worn or certified copies of all papers . . . referred to in an affidavit shall be attached thereto or served therewith." *See also First N. Am. Nat'l Bank v. Hummel*, 825 So. 2d 502, 504 (Fla. 2d DCA 2002) (party opposing motion for summary judgment could not rely on documents that were not authenticated or supported by an affidavit or other evidentiary proof); *Tunnel v. Hicks*, 574 So. 2d 264, 266 (Fla. 1st DCA 1991) (same).

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two, are sworn or certified in any manner whatsoever.[7] They likewise are *not* accompanied by an affidavit of a records custodian or other person attesting to their authenticity, completeness or correctness. Each of these 67 Supporting Papers is therefore "insufficient" to support Defendant Edward's heavy burden of proof and this court cannot rely on them to justify a grant of summary judgment. *Id.*

Moreover, the Supporting Papers constitute inadmissible hearsay and the statements within them cannot be considered for the truth. None (except Exhibit "N") has been authenticated by anyone in an attempt to lay the required foundation for their admissibility as either public records or business records. *See Bifulco*, 693 So. 2d at 710-711 (insurance documents attached to motion for summary judgment were inadmissible under business records or public records exceptions to hearsay rule where required predicate was not established); *Gray v. State*, 910 So. 2d 867, 869 (Fla. 1st DCA 2005) (document on Department of Corrections letterhead was hearsay where foundation not laid for its admission as a business record or a public record); s*ee also Adams v. State*, 521 So. 2d 337, 338 (Fla. 4th DCA 1988) (business records are inadmissible without a proper foundation for their admission).

The Supporting Papers therefore constitute unauthorized and improper unauthenticated documentary evidence which must be stricken from defendant Edwards's Statement of Undisputed Facts that allegedly support his Motion for Summary Judgment and which cannot properly be considered by this court in support of the Summary Motion.

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[7] The transcripts, no doubt, could be certified but they have not been.

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C. The Motion Is Premature Given That Discovery Has Been Stalled and Plaintiff Has Been Unable to Obtain Proof of His Claim

Plaintiff has been attempting since last spring to obtain discovery of communications, primarily in the form of emails originated and received at RRA with the intent to depose appropriate witnesses *after* having had an opportunity to review the content. To this end, Plaintiff served a subpoena on the bankruptcy trustee appointed to stand in the place of the now-defunct firm's management since before this case was filed. The subpoena resulted in proceedings before Honorable Judge Ray of the U.S. Bankruptcy Court and that court appointed a special master.

Since the appointment of the special master in August 2010, not a single document from the RRA has been turned over to Plaintiff's counsel. No privilege log, not even a partial one, has been submitted to the special master. While the amount of records is voluminous, Plaintiff had a reasonable expectation that something would have been disclosed by now. It is clear that Edwards and Farmer Jaffee have not been diligently proceeding in a manner to get the privilege log done so that ultimately the subpoenaed documents can be provided to Plaintiff in time for this hearing or the trial. In fact, Edwards, has consistently said that he should be relieved of the burden of preparing this log until this Court rules on his Summary Motion, where he unabashedly claims there is no evidence to support his involvement in the Ponzi scheme (A: 14&15).

This complete about face is mind boggling in that Edwards is now saying that Plaintiff is not entitled to *any* of this discovery – even the allegedly non privileged documents -- and that Edwards is entitled to a final summary judgment in his favor in this case.

The doctrine of judicial estoppel prevents a party who has successfully maintained a

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position in one proceeding, i.e., getting the Bankruptcy Court to grant an extension to January 31, 2011 to prepare the privilege log, cannot take a conflicting position in another proceeding, i.e., saying there is no evidence to implicate Edwards in the Ponzi scheme. *Grau v. Provident Life and All. Ins. Co.*, 899 So. 2d 396, 399 (Fla. 4th DCA 2005).

Plaintiff has a good faith belief that discovery will reveal Edwards complicity in the Ponzi scheme. Counsel for the investors has represented to the Bankruptcy Court that his clients were shown the *LM v. Epstein* case files for the purposes of deciding whether to make the investments (A: 6). Attached hereto is a order entered by the Bankruptcy Court (A: 18) granting partial summary judgment against one of the principals of RRA, Russell Adler and his wife, which made findings of facts which included:

> . . . the purpose of the Ponzi scheme was to personally enrich Rothstein and other co-conspirators and to supplement the income and sustain the daily operation of RRA. In order to achieve this purpose 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. . .
>
> RRA relied upon the Ponzi scheme to supplement and support the operation and activities of RRA, to expand RRA by the hiring of additional attorneys and support staff, to fund salaries and bonuses, and to acquire larger and more elaborate office space and equipment in order to enrich the personal wealth of the persons employed by and associated with RRA.
>
> Judge Cohn[8] also noted the importance of RRA to Rothstein's crimes which he stated that "the marketing component of the fraud focused on attracting investors with deep pockets. Mr. Rothstein displayed all the trappings of success, the multi-million dollar homes the expensive cars, the boats, the restaurants, the jewelry and

8 Federal District Judge James Cohn is the judge for Rothstein's criminal case.

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> a 70 lawyer law firm that appeared to be thriving. . .
>
> Debra Villegas, RRA's Chief Operating Officer, plead guilty to one count of conspiracy to commit money laundering. [[redacted]. 119 at *83-93]. In her plea agreement, Villegas acknowledged that "a co-conspirator [Rothstein] distributed lavish gifts, including exotic cars, jewelry, boats, loans, cash and bonuses, to individuals and to members of RRA in order to engender goodwill and loyalty and to create the appearance of a successful law firm." [*Id.* at *92]. She admitted that "[c]o-conspirators relied upon the purported success of RRA, the existence of actual RRA civil matters and the reputation of the law firm in the community to lure potential investors. . ." [*Id.* At *118].

Edwards has also refused to answer questions in his deposition on frivolous privilege claims. The Plaintiff is entitled to obtain this information in support of his claim. A Motion to Compel is presently pending.

Plaintiff contends that at a minimum, the court should enter an order precluding the setting of a hearing on any summary judgment motion by Edwards until Plaintiff has received the documents subpoenaed and discovery related to those documents has concluded.

IV. THE SWORD AND SHIELD DOCTRINE DOES NOT SUPPORT SUMMARY JUDGMENT

Edwards contends that Plaintiff must be denied any affirmative relief regardless of the merits of his cause, because at his deposition taken in the instant case, Plaintiff refused to answer certain questions, invoking his Fifth Amendment privilege. (Mot. at 19-20). Edwards also argues that he is entitled to summary judgment because Plaintiff's assertion of the Fifth Amendment raises adverse inferences which *conclusively* establish that Plaintiff's claims are without merit. (*Id.* at 21-2). Edwards' arguments are wrong.

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First, Edwards misapprehends the nature and application of the "sword and shield" doctrine, which "embraces the rule 'that a plaintiff may not seek affirmative relief in a civil action and then invoke the Fifth Amendment to avoid giving discovery in matters *pertinent to the litigation.*'" *DeLisi v. Bankers, Ins. Co.*, 436 So. 2d 1099, 1100 (Fla. 4th DCA 1983) (quoting *City of St. Petersburg v. Haughton*, 362 So. 2d 681, 685 (Fla. 2d DCA 1978) (emphasis added)). *See also Brancaccio v. Mediplex Mgmt. of Port St. Lucie, Inc.*, 711 So. 2d 1206, 1208-1210 (Fla. 4th DCA 1998) (approving *City of St. Petersburg* and *Village Inn Rest. v. Aridi*, 543 So. 2d 778,782 (Fla. 1st DCA 1989)), in which the First District agreed that "sanctions may be necessary where a plaintiff in a civil action invokes the Fifth Amendment privilege *against revealing relevant information in pretrial discovery."* (emphasis added). The Fourth District explained in *Brancaccio* that the "Supreme Court has disapproved of procedures which require a party to surrender one constitutional right in order to assert another..." 711 So. 2d, at 1210. Thus, a "civil defendant [does not] have an absolute right to have the action dismissed anytime a plaintiff invokes his constitutional privilege."

Pursuant to the foregoing authorities, Plaintiff's claims may not be dismissed on summary judgment pursuant to the "sword and shield" doctrine because the information Edwards sought to elicit from Plaintiff at his deposition, and the answers Plaintiff declined to give in response to questions about his alleged misconduct and criminal activity, would not provide any information *relevant* to Plaintiff's claims or Edwards' defense of those claims. Plaintiff's allegations are based on the belief that Edwards inflated purported claims against Plaintiff and conducted discovery of high profile figures in the cases pending at the Rothstein firm, where the Ponzi

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scheme was hatched for the specific and exclusive purpose of luring investors. Plaintiff is entitled to show that Edwards and his cohorts took actions not reasonably related to what was needed to competently represent his clients, but rather, to pump up the attractiveness of the investment opportunity. Edwards is entitled to inquire what Plaintiff knows about this activity and about Plaintiff's damages. On the other hand, numerous questions regarding Plaintiff's allegedly illegal sexual activities (*See* Plaintiff at 88-9, 95-6), and whether nationally-prominent acquaintances engaged in illegal sexual activities (*See Plaintiff,* at 89-95), would clearly not lead to the discovery of evidence relevant to Plaintiff's claims in the instant case, and were asked solely to poison the well.[9] The court recently sustained Plaintiff's objections to discovery requests geared solely to alleged sexual activity ([redacted].148,149,&150). Accordingly, the sword and shield doctrine does not apply to the illegitimate and irrelevant questions which Plaintiff declined to answer on the basis of the Fifth Amendment.

A review of Plaintiff's deposition demonstrates that he answered questions relevant to the subject litigation, including why he was suing [redacted]., the Ponzi scheme, and his damages, (*See, e.g.*, Plaintiff at 13-14, 19-20, 23, 25, 28-30, 33, 36-8, 48-50, 52, 63, 65, 83, 101), and properly invoked his Fifth Amendment privilege in response to inflammatory questions that are entirely irrelevant to the subject litigation, including whether certain prominent acquaintances socialized with him in the presence of under-age women (Plaintiff at 88-95) and the nature and extent of Plaintiff's

[9] In *Boys & Girls Club of Marion County, Inc. v. J.A.*, 22 So. 3d 855, 856 (Fla. 5th DCA 2009), upon which Edwards relies, the court noted that a plaintiff cannot avoid "legitimate" discovery and that a party "is entitled to the discovery contemplated by the rules in order to ascertain the facts and fairly present its defenses." The questions to which Plaintiff invoked his right against self-incrimination were *not* "to ascertain the facts and fairly present [Edwards'] defenses." *Id.*

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alleged illegal sexual activities with minors. (*Id.* at 106-111).[10] As a matter of settled law, Plaintiff's invocation of the Fifth Amendment to avoid giving discovery regarding *impertinent* matters does not trigger application of the sword and shield doctrine.

Second, Edwards' argument that he is entitled to summary judgment on the basis of adverse inferences to be drawn from Plaintiff's assertion of the Fifth Amendment is equally flawed. Although the Supreme Court held in *Baxter v. Palmiglano*, 425 U.S. 308, 318 (1976), that an adverse inference could be drawn from a party's assertion of a Fifth Amendment privilege in a civil suit, such silence "is not sufficiently weighty to carry a moving party's burden in a motion for summary judgment." *Fid. Funding of Cal., Inc. v. Reinhold*, 79 F. Supp. 2d 110, 116 ([redacted]. [redacted] 1997). As explained in *LaSalle Bank Lake View v. Seguban*, 54 F. 3d 387, 391 n.7 (7th Cir. 1995):

> Treating Seguban's silence as a separate piece of evidence supporting the Bank's motion for summary judgment and drawing inferences against the Segubans on the basis of that fact seems to be in tension with the ordinary summary judgment rule that all reasonable inferences must be drawn in favor of the nonmovant.

See also Parsons & Whittemore Enter. Corp. v. Schwartz, 387 F. Supp. 2d 368, 372 ([redacted]. [redacted]. 2005) (assuming that a jury could draw an adverse inference form the invocation of the Fifth Amendment, "the court is still required at summary judgment to draw all reasonable inferences in favor of the non-moving party."); *Sec. & Exch.* [redacted] *v. Monterosso*, 2010 U.S. Dist LEXIS 108199, at *22 ([redacted]. Fla. Sept. 28, 2010) ("Where adverse inferences are drawn from invocation

[10] For example, Edwards' counsel asked Plaintiff whether he socialized with Donald Trump in the presence of women under the age of 18. Plaintiff responded by invoking his right against self-incrimination. (Plaintiff at 89). Plaintiff also refused to answer the number of times he "engaged in oral sex with females under the age of 18." (*Id.* at 110).

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of the privilege, such inferences must not result in automatic summary judgment against the person invoking the privilege."). Insofar as Florida law likewise requires that all inferences be drawn in favor of Plaintiff, the non-moving party, Edwards is not entitled to summary judgment on the basis of any adverse inferences from Plaintiff's assertion of his Fifth Amendment privilege against self-incrimination.

Moreover, the "reasonable references" which Edwards asks this Court to draw from Plaintiff's refusal to answer certain questions (*See* Motion at 22) fall critically short of demonstrating that there are no triable issues of material fact and that Edwards is entitled to judgment as a matter of law. A purported inference that Plaintiff was on a private plane "while sexual assaults were taking place," or that he had physical contact with certain minors, is not even probative of Plaintiff's claims, let alone *dispositive*. In sum, Edwards' argument that Plaintiff's invocation of the Fifth Amendment compels the entry of summary judgment in favor of Edwards must be rejected.

VI. CONCLUSION

Based on the foregoing, Plaintiff Jeffrey Epstein respectfully requests that this Court enter an Order denying the Motion for Summary Judgment of Bradley Edwards and striking Exhibits "A" through "M" and "O" through "UU," as well as Attachments numbered "1" through "22," allegedly offered in support of Defendant Bradley J. Edwards's Statement of Undisputed Facts submitted with his Motion for Summary Judgment as to all claims against him. Once the unauthenticated exhibits are stricken, there is insufficient evidence for Edwards to carry his burden for obtaining a summary judgment. Moreover, Edwards cannot carry his burden for

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obtaining a summary judgment based on his interpretation of the "sword/shield doctrine". Finally, because Edwards on the one hand has claimed there is not evidence to implicate him in the Ponze scheme and on the other has actively opposed and delayed the preparation of the privilege log so that Plaintiff can obtain the documents and conduct the relevant discovery to establish Edward's involvement, the motion should be denied.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been duly furnished via ☐ Email, ☐ Facsimile, ☐ U.S. Mail, ☐ Hand Delivery, ☑ Federal Express this 29th day of December, 2010 to:

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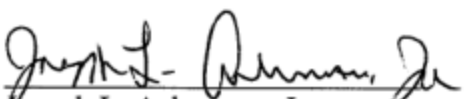
Respectfully submitted,



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