

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

CASE NO.: 502009CA040800XXXXMBAG

JEFFREY EPSTEIN,

Plaintiff(s),

vs.

SCOTT ROTHSTEIN, individually,
BRADLEY J. EDWARDS, individually, and
█ f., individually,

Defendant(s).

**MOTION TO DETERMINE ENTITLEMENT TO ADVERSE INFERENCE AND
PRECLUDING EPSTEIN FROM OFFERING EVIDENCE AT TRIAL**

Bradley Edwards, by and through his undersigned attorneys, moves this Honorable Court to determine his entitlement to an instruction to the jury before whom this matter shall be tried, that the jury is entitled to conclude solely on the basis of Epstein's refusal to answer that had Jeffrey Epstein responded truthfully to any relevant discovery request as to which he has refused to answer or respond based upon an assertion of his Fifth Amendment privilege, that all such answers and responses would, in fact, have implicated him in the commission of a crime or would otherwise have disclosed information adverse to Jeffrey Epstein's interests in this lawsuit.

Bradley Edwards further moves this Honorable Court to enter an Order precluding Jeffrey Epstein from offering evidence or testimony as to any matter about which he has declined on the basis of the assertion of privilege to provide pre-trial discovery.

Edwards adv. Epstein
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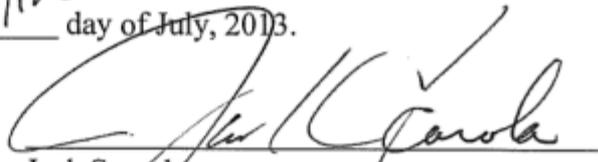
In support of this motion, Bradley Edwards would show that the Court has the inherent power to avoid or minimize the unfairness to Edwards that is caused by Epstein's foreclosure of clearly relevant discovery inquiries. An order precluding Epstein from offering any proof in support of the matters as to which he has asserted privilege is an appropriate means to address such circumstances. See *Securities and Exchange Comm'n. v. American Beryllium & Oil Corp.*, 303 F. Supp.912 (S.D.N.Y. 1969); Fed. R.Civ.P. 37 (b)(2)(B); Fla. R.Civ. P. 1.380(b)(2)(B). Indeed where proof of a contested issue is in the control of a defendant, the court has authority pursuant to Fla. R.Civ. P. 1.380(b)(2)(A) to enter an order establishing the facts in accordance with the plaintiff's version of them.

Unlike criminal proceedings, the defendant in a civil case can be compelled to take the stand and assert the privilege in response to questioning before the fact finder. The plaintiff is then entitled to an adverse inference in response to the unanswered questions and counsel is entitled to argue that adverse inference. See *Baxter v. Palmigiano*, 425 U.S. 308, 318, 96 S. Ct. 1551, 47 L.Ed. 2d 810 (1976).

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WHEREFORE, Bradley Edwards respectfully requests the entry of an Order establishing his right to the relief sought herein.

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 17th day of July, 2013.



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