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

JEFFREY EPSTEIN,

Plaintiff/Counter-Defendant, Case No. 50 2009 CA 040800XXXXMBAG

vs.

SCOTT ROTHSTEIN, individually,

BRADLEY J. EDWARDS, individually,

Defendant/Counter-Plaintiff.

_____/

SUMMARY OF PLAINTIFF/COUNTER-DEFENDANT JEFFREY EPSTEIN'S MOTION FOR SUMMARY JUDGMENT AND INCORPORATED MEMORANDUM OF LAW

Plaintiff/Counter-Defendant, Jeffrey Epstein ("Epstein"), by and through his undersigned counsel and pursuant to this Court's Order dated November 4, 2013 setting this Motion for Hearing[1], files this Summary of his Motion for Summary Judgment on Defendant/Counter-Plaintiff Bradley Edwards's Fourth Amended Counterclaim, and states:

I. SUMMARY OF THE ARGUMENT

Epstein filed this action to recover damages from Co-Defendants Scott Rothstein ("Rothstein") and Bradley J. Edwards ("Edwards") based upon Epstein's well-founded belief at the time of filing his Complaint that these two individuals, among others, engaged in serious misconduct involving a widely publicized illegal pyramid scheme operated through their law firm, Rothstein, Rosenfeldt & Adler ("RRA"). To further the Ponzi Scheme, civil cases were used as bait to lure unsuspecting investors into the fraudulent scheme, including cases being prosecuted against Epstein by RRA through its Partner and lead counsel, Bradley J. Edwards.

In response to Epstein's original lawsuit, Edwards filed a Counterclaim, and after a series of dismissals and multiple revisions thereof, Edwards alleges two causes of action against Epstein:

[1] Epstein's Motion for Summary Judgment was filed before the Hearing was set and the Court issued its order, which states that submissions should not exceed ten (10) pages. In accordance with that order, Epstein submits this summary of his Motion.

abuse of process and malicious prosecution. Epstein has denied liability as to these causes of action and has asserted various affirmative defenses, including Edwards's inability to overcome the absolute immunity afforded to Epstein under the litigation privilege and Edwards's failure to state causes of action in abuse of process and in malicious prosecution.

II. STATEMENT OF UNDISPUTED FACTS

Edwards's suit against Epstein is premised upon Epstein's filing of a lawsuit against Edwards and Scott Rothstein. Epstein's filing of the suit, as well as any and all actions taken during the course of prosecuting it, are absolutely protected by the litigation privilege. In addition to the absolute immunity afforded by the litigation privilege, Edwards's causes of action are easily negated by the following uncontested, incontrovertible, and undeniable facts[2]:

Edwards was a partner at Rothstein Rosenfeld Adler ("RRA") from April 2009 through November 2009, a period during which RRA was a front for the largest Ponzi scheme in Florida's history. In early November 2009, as a result of widely publicized press accounts, Epstein learned that RRA had imploded, and that three civil cases that RRA was prosecuting against Epstein (the "Epstein Cases") were used to defraud investors of millions of dollars and fund the RRA Ponzi scheme. Edwards was the lead counsel and the supervising attorney over each of the Epstein Cases used to lure investors and fund the Ponzi scheme.

In late November 2009, Epstein was also alerted that as a result of the Ponzi scheme at RRA, the law firm of Conrad Scherer had filed a Complaint against Scott Rothstein and others, *Razorback Funding, LLC, et al. v. Scott W. Rothstein, et al.*, Case No. 09-062943(19) (hereinafter referenced as the "Razorback Complaint"), on behalf of some of the Ponzi scheme investors. In the Razorback Complaint, Mr. Scherer detailed RRA's fraudulent use of the Epstein Cases, alleging:

> Rothstein used RRA's representation in the Epstein case to pursue issues and evidence unrelated to the underlying litigation but which was potentially beneficial to lure investors

[2] A separate index and copies of all items cited in the undisputed facts is provided with the full Motion.

> into the Ponzi scheme. For instance, **RRA relentlessly pursued flight data and passenger manifests regarding flights Epstein took with other famous individuals knowing full well that no under age [sic] women were on board and no illicit activities took place. RRA also inappropriately attempted to take the depositions of these celebrities in a deliberate effort to bolster Rothstein's lies.** *See Razorback Amended Complaint*; page 17; ¶ 49 (emphasis added). (The relevant portion of the Razorback Complaint is attached for reference.)

The deposition subpoenas and discovery requests to which the *Razorback* Complaint refers were served and filed by Edwards at the time that Edwards was a partner at RRA and the lead attorney on the Epstein Cases.

On December 1, 2009, before Epstein filed suit, the Information against Scott Rothstein was filed by the Federal government. The Information repeatedly references RRA as the Enterprise with which Rothstein and his co-conspirators were associated and by which they were employed. The Information charges that "Rothstein and his conspirators, known and unknown," participated in or conspired to participate in "racketeering activity" to further the Ponzi scheme. Edwards's partner at RRA, Scott Rothstein, admitted to and was convicted for these acts that occurred at RRA. He is serving a fifty (50) year sentence. Several other partners of RRA have also been Federally charged and/or convicted, and the US Government has confirmed that the events at RRA are still the subject of an active, ongoing investigation.

As described fully in Epstein's Summary Judgment Motion, questionable litigation practices in the Epstein Cases, including those described above in the Razorback Complaint, intensified drastically in the short six (6) months during which Edwards was a partner at RRA. Edwards admitted that there were between $300,000 and $500,000 in litigation and investigation related expenditures on the Epstein Cases during that six (6)-month period, and that Edwards's expenditures on the Epstein Cases during the eight months preceding Edwards's arrival at RRA may not even have reached $25,000. Epstein was forced to expend funds for attorney's fees in resisting this onslaught

and according to the allegations made in the Razorback Complaint, at least some of these efforts were made to further the Ponzi Scheme.

On July 23, 2009, Edwards held a meeting at RRA with all attorneys regarding the Epstein Cases. The next day, on July 24, 2009, Edwards filed a two hundred thirty-four (234) page, one fifty-six (156) count federal complaint against Epstein on behalf of a plaintiff, LM, for whom Edwards was already prosecuting a case against Epstein in state court involving the very same facts alleged in the federal complaint. The complaint was filed in federal court, but was never served on Epstein. It was, admittedly, shown to the Ponzi scheme investors. Although other undisputed facts are cited in support of Epstein's Motion for Summary Judgment, the above facts, alone, require that it be granted.

III. MEMORANDUM OF LAW

Summary Judgment is mandated when the pleadings, depositions, answers to interrogatories, admissions, affidavits, and other materials in evidence on file show that there are no genuine issues as to any material fact and that the moving party is entitled to judgment as a matter of law. FLA. R.CIV. P. 1.510; *Volusia County v. Aberdeen at Ormond Beach,* 760 So. 2d 126, 130 (Fla. 2000); *Smith v. Shelton*, 970 So. 2d 450, 451 (Fla. 4th DCA 2007). Here, as established by Edwards's own pleadings and discovery, the litigation privilege completely bars both of Edwards's causes of action, mandating Summary Judgment. In addition to the litigation privilege's absolute bar of both Edwards's causes of action, Edwards cannot, as a matter of law, establish all of the essential elements of either cause of action he asserts against Epstein, rendering all other facts offered by Edwards immaterial, *see Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986), and further warranting Summary Judgment.

Although Epstein's full and complete argument is submitted in his Motion for Summary Judgment, at the core of the Motion is the fact that both Edwards's causes of action are absolutely barred by the litigation privilege. As unequivocally stated in the recent decision of *Wolfe v. Foreman*, 38 FLA. L. WEEKLY D1540 (July 17, 2013) (a copy is attached for reference) and all of the

Florida Supreme Court cases cited therein, Florida's litigation privilege provides to all persons involved in judicial proceedings an absolute privilege from civil liability for actions taken in relation to those proceedings, including in an action for abuse of process or malicious prosecution. The Florida Supreme Court explained the following policy reasons for the litigation privilege:

> l**n balancing policy considerations, we find that absolute immunity must be afforded to any act occurring during the course of a judicial proceeding, regardless of whether the act involves a defamatory statement or other tortious behavior such as the alleged misconduct at issue, so long as the act has some relation to the proceeding.** *Levin, Middlebrooks, Moves & Mitchell,* [redacted]*. v. U.S. Fire Ins. Co.*, 639 So.2d 606, 608 (Fla. 1994) (emphasis added). (A copy of *Levin* is attached for reference)

Wolfe v. Foreman, 38 FLA. L. WEEKLY D1540 (July 17, 2013), is directly on point with the facts and law presented in the case at hand. In *Wolfe*, the Third District Court of Appeal affirmed the trial court's order granting a motion for judgment on the pleadings in an abuse of process and malicious prosecution action, finding that the litigation privilege applied to, and barred, **both** causes of action. *Id*. The court's focus was on whether the acts alleged "occurr[ed] during the course of a judicial proceeding . . . so long as the act has some relation to the proceeding'" *Id*. (citing Levin, 639 So.2d at 608). The court, relying upon Florida Supreme Court cases, held that because the acts relating to abuse of process occurred *after* the complaint was filed and were *related to* the judicial proceedings, the abuse of process cause of action was completely barred. *Id* (emphasis added).

Likewise, in conducting its analysis of the cause of action for malicious prosecution, which was based on the filing of a complaint, just as with the case at hand, the *Wolfe* court stated that it is:

> guided and restrained by the broad language and application of the privilege articulated by the Florida Supreme Court in *Levin* and *Echevarria*. In *Levin*, the Florida Supreme Court held that absolute immunity must be afforded to any act occurring during the course of a judicial proceeding . . . so long as the act has some relation to the proceeding." *Levin*, 639 So. 2d at 608. In *Echevarria*, the Court reiterated its broad application of privilege "applies in all causes of action, statutory as well as common law." *Echevarria*, 950 So. 2d at 380-81.

The *Wolfe* court continued, unequivocally stating that:

> It is difficult to imagine any act that would fit more firmly within the parameters of *Levin* and *Echevarria* than the actual filing of a complaint. The filing of a complaint, which initiates the

> judicial proceedings, obviously "occurs during the course of a judicial proceeding" and "relates to the proceeding . . .
>
> Because the Florida Supreme Court has clearly and unambiguously stated, not once, but twice, that the litigation privilege applies to *all* causes of actions, and specifically articulated that its rationale for applying the privilege so broadly was to permit the participants to be "free to use their best judgment in prosecuting or defending a lawsuit without fear of having to defend their actions in a subsequent civil action for misconduct," we are obligated to conclude that the act complained of here -- the filing of the complaint – is protected by the litigation privilege.

Wolfe v. Foreman, 38 FLA. L. WEEKLY D1540 (July 17, 2013).

Similarly, in the case at hand, Edwards's exclusive basis for his cause of action for abuse of process against Epstein is:

> [e]ach and every pleading filed by and on behalf of EPSTEIN in his prosecution of every claim against EDWARDS, every motion, every request for production, every subpoena issued, and every deposition taken as detailed on the docket sheet . . ." *See Edwards's Fourth Amended Counterclaim.*

Edwards reiterated this point in his responses to discovery requests for information specifying Epstein's alleged abuse of process, citing: "every pleading, motion, notice and discovery request served by the Plaintiff on Bradley Edwards in this case;" and/or "the date of service of each of the above as reflected on the Certificate of Service of each." *See Answers to Interrogatories filed June 10, 2011.* Accordingly, as unequivocally stated in Edwards's own pleadings and discovery responses, the events giving rise to Edwards's purported claims against Epstein occurred *solely* in the conduct of and related to the litigation, just as occurred in the *Wolfe* case. *Wolfe v. Foreman*, 38 FLA. L. WEEKLY D1540 (July 17, 2013); *American Nat. Title & Escrow of Florida, Inc. v. Guarantee Title & Trust, Co.*, 748 So. 2d 1054, 1056 (Fla. 4th DCA 1999); *see also Montejo v. Martin Memorial Medical Center, Inc.*, 935 So. 2d 1266, 1269 (Fla. 4th DCA 2006). Furthermore, the sole basis for Edwards's cause of action for malicious prosecution is Epstein's filing of a civil complaint against Edwards. *See Edwards's Fourth Amended Counterclaim.* Irrefutably, and as stated by the *Wolfe* court in its analysis of the malicious prosecution claim, "[i]t is difficult to imagine any act that would fit more firmly

within the parameters of Levin and Echevarria than the actual filing of a complaint." *Wolfe v. Foreman*, 38 FLA. L. WEEKLY D1540 (July 17, 2013). Based on the unequivocal holdings in *Wolfe* and the cases cited therein, Epstein's actions were absolutely protected by the litigation privilege and Summary Judgment is required as a matter of law.

In addition to Edwards's inability to overcome the absolute bar afforded by the litigation privilege, Edwards is equally unable, as a matter of law, to establish the requisites for either an abuse of process or a malicious prosecution cause of action. It is axiomatic that under Florida law "the mere filing of a complaint and having process served is not enough to show abuse of process. The plaintiff must prove improper use of process *after it issues*." *S&I Invs.,* 36 So. 3d at 917 (quoting Della-Donna v. Nova Univ., Inc., 512 So. 2d 1051, 1055-56 (Fla. 4th DCA 1987)); *Marty v. Gresh*, 501 So. 2d 87, 90 (Fla. 1st DCA 1987) ("[A]buse of process requires an act constituting the misuse of process *after it issues*. The maliciousness or lack of foundation of the asserted cause of action itself is actually *irrelevant* to the tort of abuse of process."); *Wolfe v. Foreman*, 38 Fla. L. Weekly D1540 (July 17, 2013). Even the "filing of a lawsuit with the ulterior motive of harassment does not constitute abuse of process." *Della-Donna*, 512 So. 2d at 1055. It is indisputable that Edwards's own pleadings and discovery responses establish that Edwards's cause of action for Abuse of Process is based on nothing more than general references to Epstein's pleadings and discovery in the underlying action. *See Edwards's Fourth Amended Counterclaim,* paragraph 16 (emphasis added), and *Edwards's Answers to Interrogatories filed June 10, 2011*. Florida law has repeatedly held that "there is no abuse of process [ ] when the process is used to accomplish the result for which it was created, regardless of an incidental or concurrent motive of spite or ulterior purpose." *S&I Investments v. Payless Flea Market, Inc.*, 36 So. 3d 909, 917 (Fla. 4th DCA 2010), quoting *Bothmann v. Harrington*, 458 So. 2d 1163, 1169 (Fla. 3d DCA 1984). Although Edwards attributes concurrent motives to Epstein's pleadings and discovery, every such pleading and discovery item of Epstein

cited by Edwards, on its face, was intrinsically related to Epstein's case and used for the purpose of prosecuting it. Accordingly, Edwards has not satisfied his burden and summary judgment on Edwards's count for abuse of process is mandated as a matter of law. *Levin, Middlebrooks, Moves & Mitchell, P.A. v. U.S. Fire Ins. Co.*, 639 So. 2d 606, 608 (Fla. 1994); *McMurray v. U-Haul Co.*, 425 So. 2d 1208 (Fla. 4th DCA 1983); *Della-Donna v. Nova University, Inc.*, 512 So.2d 1051, 1056 (Fla. 4th DCA 1987); *Wolfe v. Foreman*, 38 Fla. L. Weekly D1540 (July 17, 2013).

Additionally, actions for malicious prosecution are "not generally favored." *Central Florida Machinery Co., Inc. v. Williams*, 424 So. 2d 201, 202 (Fla. 2d DCA 1983), and cannot prevail unless, among other elements, there was an absence of probable cause to file the underlying action or there was a bona fide termination of the underlying action. *See Doss v. Bank of America, N.A.,* 857 So. 2d 991, 994 (Fla. 5th DCA 2003); *Kalt v. Dollar Rent-A-Car,* 422 So. 2d 1031, 1032 (Fla. 3d DCA 1982) (holding that "[t]**he absence of any one of these elements will defeat a malicious prosecution action.**")(emphasis added); *Alamo Rent-A-Car, Inc. v. Mancusi*, 632 So. 2d 1352, 1355 (Fla. 1994); *Durkin v. Davis,* 814 So. 2d 1246, 1248 (Fla. 2d DCA 2002). Moreover, "if a multi-count complaint contains **one count** that has not been filed maliciously, then a malicious prosecution action cannot lie against that complaint." *May v. Fundament*, 444 So. 2d 1171, 1172-73 (Fla. 4th DCA 1984) (emphasis added).

An indispensable element in the tort of malicious prosecution is the absence of probable cause. *Thompson McKinnon Securities, Inc. v. Light*, 534 So. 2d 757, 759 (Fla. 3d DCA 1988). Probable cause only becomes a question for the jury when material facts are disputed. *City of Pensacola v. Owens*, 369 So. 2d 328, 329 (Fla.1979). The threshold for establishing probable cause in a civil action, that is, whether the defendant "reasonably could have believed" that the person in the previous action was guilty of the claims previously alleged, at the time of asserting the claim, is extremely low and easily satisfied. *Gill v. Kostroff*, 82 F. Supp. 2d 1354 (M.D. Fla. 2000) (applying

Florida law) (citing State v. Cote, 547 So. 2d 993, 996 (Fla. 4th DCA 1989)); *Wright v. Yurko*. 446 So.2d 1162, 1167 (Fla. 5th DCA 1984) "A determination of whether probable cause exists is based on the facts known by the defendant in the malicious prosecution action at the time the underlying action was initiated, not some later point in time." *Gill*, 82 F.Supp. 2d at 1364 (citing United States v. Irurzun, 631 F.2d 60, 62 (5th Cir.1980)). Here, the allegations in Epstein's lawsuit against Edwards, coupled with the irrefutable facts surrounding the underlying "Epstein Cases" and what was occurring at RRA during the time in question as delineated in the undisputed facts above, undeniably satisfy, as a matter of law, the extremely low threshold required for probable cause to file a civil suit against Rothstein and Edwards, which warrants Summary Judgment in Epstein's favor.

In addition, the requisite "bone-fide termination of the original proceeding in favor of the present plaintiff" required for a malicious prosecution claim, has not been, nor can it ever be, satisfied. *See Alamo rent-A-Car v. Mancusi*, 632 So. 2d 1352, 1355 (Fla. 1994). The "original proceeding" to which Edwards refers in his Counterclaim is, in fact, the case Epstein voluntarily dismissed without prejudice. It is well-settled law that counts of a Complaint that are **dismissed *without prejudice*** are not deemed a "bona fide termination" in that party's favor. As stated by the Third District Court of Appeals when addressing the requirements of a bona fide termination:

> "[t]his is a fancy phrase which means that **the first suit, on which the malicious prosecution suit is based, ended in a manner indicating the original defendant's (and current plaintiff's) innocence of the charges or allegations contained in the first suit, so that a court handling the malicious prosecution suit, can conclude with confidence, that the termination of the first suit was not only favorable to the defendant in that suit, but also that it demonstrated the first suit's lack of merit.** Therefore, suits that terminate because of technical or procedural reasons or considerations other than the merits of the first suit, are not "bona fide terminations" and will not support a malicious prosecution suit. . ." *Valdes v. GAB Robins North America, Inc*., 924 So. 2d 862, 866-867 (Fla. 3d DCA 2006) (emphasis added).

Here, there is a single Notice of Voluntary Dismissal without Prejudice which, irrefutably, is not a bona-fide termination, *Cline v. Flagler Sales Corp.,* 207 So. 2d 709, 710 (Fla. 3d DCA 1968), and Edwards's case fails as a matter of law.

CONCLUSION

There is no evidence that could justify Edwards's causes of action against Epstein which, as unequivocally confirmed by the recent *Wolfe* case, are completely barred by the absolute immunity afforded Epstein by the litigation privilege, and are precluded as a matter of law by the undisputed facts in this case. Summary Judgment must be granted for Epstein because there is no material issue of fact to resolve and Epstein is therefore entitled to judgment as a matter of law. Accordingly, in reliance upon the foregoing arguments and authorities, Plaintiff/Counter-Defendant Jeffrey Epstein respectfully requests that the Court grant his Motion for Summary Judgment.

WE HEREBY CERTIFY that a true and correct copy of the foregoing was served, via electronic service, to all parties on the attached service list, this January __, 2014.

/s/ Tonja Haddad Coleman
Tonja Haddad Coleman, Esq.
Florida Bar No.: 176737
Tonja Haddad, PA
[redacted]
(facsimile)
[redacted]
Attorneys for Epstein

SERVICE LIST

CASE NO. 502009CA040800XXXXMBAG

Jack Scarola, Esq.
[redacted]
Searcy Denney Scarola et al.
[redacted]

Jack Goldberger, Esq.
[redacted]
Atterbury, Goldberger, & Weiss, PA
[redacted]

Marc Nurik, Esq.
[redacted]

Bradley J. Edwards, Esq.
[redacted]
Farmer Jaffe Weissing Edwards Fistos Lehrman
[redacted]

Fred Haddad, Esq.
[redacted]

Tonja Haddad Coleman, Esquire
[redacted]
Law Offices of Tonja Haddad, P.A.
[redacted]
Attorneys for Jeffrey Epstein