

IN THE CIRCUIT COURT OF THE
SEVENTEENTH JUDICIAL CIRCUIT,
IN AND FOR BROWARD COUNTY,
FLORIDA

Case No.: CACE 15-000072

EDWARDS, *et al.*,

Plaintiffs / Counterclaim Defendants,

vs.

DERSHOWITZ,

Defendant / Counterclaim Plaintiff.

DEFENDANT ALAN M. DERSHOWITZ'S
MOTION IN LIMINE TO OVERRULE OBJECTIONS
AS TO APPLICATION OF SETTLEMENT RULES

Defendant Alan M. Dershowitz ("Dershowitz") respectfully moves this Court in limine to overrule objections to evidence asserted by non-party [REDACTED], supposedly based upon the rules governing settlement discussions. The evidence includes communications by Dershowitz with Roberts's attorney, David Boies ("Boies"), in the presence of others who have no role as parties or counsel to anyone involved in this matter. Those discussions were not settlement communications and, regardless, are discoverable evidence. Accordingly, Dershowitz seeks a ruling in limine that Dershowitz's discussions with Boies are discoverable and may not be excluded from evidence on the grounds that they are "settlement communications."

FACTUAL BACKGROUND

Dershowitz's Communications With Boies

1. As set forth in the Affidavit of Alan M. Dershowitz, attached as Exhibit B,

Dershowitz has had multiple communications in person, by phone, and through videoconference with Boies and others since May 2015 to discuss the untrue and harmful allegations made by [REDACTED] about Dershowitz. Dershowitz Aff., ¶¶ 3-4. Dershowitz had those communications with Boies – someone he has known professionally for many years – in the hopes of convincing Boies that the allegations were verifiably incorrect and so that Boies might assist in getting [REDACTED] to publicly recant her false statements. Dershowitz Aff., ¶¶ 2, 5.

2. Boies repeatedly disavowed any ability to settle anything because he does not represent the Plaintiffs in this case, Edwards and Cassell. Dershowitz Aff., ¶ 5. Neither Edwards nor Cassell, nor their counsel, Jack Scarola, participated in the communications between Dershowitz and Boies. Dershowitz Aff., ¶¶ 13, 19, 24.

3. On the other hand, David Stone, who represents neither Boies nor Dershowitz (nor Roberts), but who is simply a mutual friend of both Boies and Dershowitz, did participate in the in-person meetings, including the one that Dershowitz participated in via videoconference. Dershowitz Aff., ¶¶ 13, 19, 24.

Roberts's "Settlement Communications" Objection to Discovery

4. Plaintiffs in this action began taking Dershowitz's deposition on October 15, 2015. During that deposition, counsel for non-party Roberts objected to Dershowitz's testimony regarding Dershowitz's communications with Mr. Boies, wrongly asserting that they were settlement discussions and insisting that this Court address the issue, as follows:

Q. ... Did they tell you -- did you ask who contacted Leslie Wexner?

A. The first answer was [REDACTED] lawyer.

I then subsequently learned that among those who contacted Leslie Wexner's lawyers was David Boies and Sigrid McCawley.

Q. Not Bradley Edwards, correct?

MR. SCOTT: Objection as to the form.
BY MR. SCAROLA:

Q. Correct?

A. I was not given the name Bradley Edwards at that time. But was subsequently told by David Boies that Bradley Edwards and Paul Cassell --

MS. McCAWLEY: I'm going to object to the extent this reveals any conversations that happened in the context of settlement discussions.

MR. SCOTT: Okay. Note your objection. Go ahead.

A. That I was ultimately told by David Boies that he had done an extensive investigation of the allegations against Leslie Wexner and had concluded that they were --

MS. McCAWLEY: Again, I'm going to object to this has happened in the context of settlement --

A. -- false.

MS. McCAWLEY: -- negotiations. I'm going to move for sanctions if information is revealed that happened in the context of settlement discussions.

MR. SCOTT: I don't know whether -- I don't believe there were settlement discussions. But even if they weren't, they would still be admissible.

A. Let me continue --

MR. SCOTT: For discovery purposes.

A. -- that David Boies had done --

MS. McCAWLEY: I disagree. I think we're going to have to take this to the judge, then; if we're going to reveal settlement conversations in this conversation, then we need to go to the judge on it.

See Excerpts of Deposition of Alan M. Dershowitz, attached hereto as Exhibit A.

5. The issue arose again, with Roberts's counsel again wrongly insisting that evidence was non-discoverable as a settlement communication, as follows:

... And -- and the very idea that I would stand and talk to Jeffrey Epstein while he was receiving oral sex from V [REDACTED] which she

swore to under oath, is so outrageous, so preposterous, that even David Boies said he couldn't believe it was true.

MS. McCAWLEY: I object. I object. I'm not going to allow you to reveal any conversations that happened in the context of a settlement discussion.

Id.

6. The issue then came up a third time, with Dershowitz offering to answer a question posed by Plaintiffs' counsel, but demurring until this Court could address the "settlement communication" objection to discovery repeatedly posed by Roberts' counsel:

Q. Okay. So it has been ten months since you allegedly became aware of that suborning of perjury and some eight months since your allegedly having become aware of the extortion plot, but you have filed no criminal complaints against anyone, correct?

A. To answer that question requires me to disclose conversations I had with David Boies. I would love to answer that question.

Q. No, sir, it does not.

A. Yes, it does.

MR. SCOTT: Whoa, you can't -- how can you say --

BY MR. SCAROLA:

Q. Whether you filed a criminal complaint or not.

A. Yes, it does.

MR. SCOTT: Please, Jack, he can't say that.

A. It does involve conversation I had with David Boies.

BY MR. SCAROLA:

Q. Well, in that case, in light of the fact that that is a matter that will be addressed by the Court, we'll save that question for another time.

A. I'm anxious to answer it.

Q. And I'm anxious to get an answer.

A. Well, I hope we can agree I should be able to answer it.

Id.

7. The continuation of Dershowitz's deposition is currently being scheduled for the next mutually convenient date for the witness and counsel.

ARGUMENT

8. Florida's rules of evidence and procedure that apply to discovery and admissibility of settlement communications have no application here. First, the communications between Dershowitz and Boies are not settlement communications. Boies expressly stated that he had absolutely no authority to settle the defamation action between Plaintiffs and Dershowitz. Instead, both Boies and Dershowitz confirmed with each other that the purpose of the communications were simply an opportunity for Dershowitz to provide documentary evidence that [REDACTED]'s allegations about him were untrue, so that Boies might convince Roberts that she was mistaken in naming Dershowitz in her affidavit that was filed in the CVRA action.

9. There is no claim or lawsuit that has been asserted between Dershowitz and Roberts. There is no claim that Dershowitz and Boies could be settling through the described communications since Boies does not represent anyone in litigation with Dershowitz.

10. Nor could the mediation privilege under Fla. Stat. 44.1011, *et seq.* apply because the communications between Dershowitz and Boies were not "mediation communications" as defined in the statute. *See* Fla. Stat. § 44.403(1) (2004) ("'Mediation communication' means an oral or written statement, or nonverbal conduct intended to make an assertion, by or to a mediation participant made *during the course of a mediation*, or prior to mediation if made in furtherance of a mediation. The commission of a crime during a mediation is not a mediation communication.") (emphasis added).

11. The participants in the communications made no effort to protect their discussions

as privileged for settlement purposes. To the contrary, by including David Stone, who is not counsel for any party involved, in the communications, the participants effectively precluded any later assertion of privilege. *Cf.* Fla. Stat. § 90.502(c) (2000) (attorney-client privilege cannot be maintained where disclosed to third party unless the “disclosure is in furtherance of the rendition of legal services to the client” and the third party is “reasonably necessary for the transmission of the communication.”). Moreover, Boies never requested and the participants in the communications never executed a written confidentiality agreement for their discussions.

12. Second, even if the communications between Dershowitz and Boies somehow were settlement communications, they are discoverable evidence. Inadmissibility at trial is not the determining factor of whether or not the discussions are discoverable. They are discoverable if it appears they are reasonably calculated to lead to the discovery of admissible evidence. Fla. R. Civ. P. 1.280 (b)(1); *Amente v. Newman*, 653 So.2d 1030 (Fla. 1995) (relevancy concept is broader in discovery context than in trial context, and party may be permitted to discover relevant evidence that would be inadmissible at trial if it may lead to discovery of relevant evidence). Because the permissible scope of discovery is so broad, a “trial court is given wide discretion in dealing with discovery matters, and unless there is a clear abuse of that discretion, the appellate court will not disturb the trial court’s order.” *Alvarez v. Cooper Tire & Rubber Co.*, 75 So.3d 789, 793 (Fla. 4th DCA 2011). Roberts, as the objecting party, would have a “heavy burden” to show that the trial court’s order departs from the essential requirements of law. *Elsner v. E-Commerce Coffee Club*, 126 So.3d 1261, 1263 (Fla. 4th DCA 2013). Plaintiffs have repeatedly sought the information at issue in deposition of Dershowitz, presumably because they view it as relevant to the facts in dispute in this action. Dershowitz has offered to answer the requested discovery, subject to this Court’s ruling on the objections by Roberts’s counsel. Ex. A.

13. Admissibility at trial is a different issue, and the discussions at issue here are admissible for relevant purposes in any event. Florida Evidence Code Section 90.408 excludes evidence of an offer to compromise a claim which was disputed and statements made in negotiations concerning a compromise when it is offered “to prove liability or absence of liability for the claim or its value.” The subject of the Boies/Dershowitz discussions was not an offer to compromise, and Boies expressly made clear that was not his intended topic of discussion and he had no such authority. Similarly, Florida Statute Section 768.041(3) states: “The fact of such a release or covenant not to sue, or that any defendant has been dismissed by order of the court shall not be made known to the jury.” None of the forbidden subjects – an offer to compromise, a release, a covenant not to sue, or a dismissal – exists here. Thus, even the most remotely relevant rules do not provide a blanket prohibition on the admission of what Boies and Dershowitz discussed, provided that the evidence is relevant to a fact in dispute and that the testimony is otherwise admissible under the Rules of Evidence.

CONCLUSION

As shown above, the communications between Dershowitz and Boies, in the presence of others who have no role as parties or counsel to anyone involved in this matter, were not settlement communications and, regardless, are discoverable evidence. Accordingly, Dershowitz requests that the Court rule *in limine* that Dershowitz’s discussions with Boies are discoverable and may be used at trial, subject only to the rules of evidence concerning relevance and admissibility.

Dated: December 11, 2015

Respectfully submitted,

s/ Thomas E. Scott

Thomas E. Scott, FBN 149100

Thomas.scott@csklegal.com

Steven R. Safra, FBN 057028

Steven.safra@csklegal.com

COLE, SCOTT & KISSANE, P.A.

Dadeland Centre II, 14th Floor

9150 South Dadeland Boulevard

Miami, Florida 33156

Phone: (305) 350-5300

Fax: (305) 373-2294

Richard A. Simpson (*pro hac vice*)

rsimpson@wileyrein.com

Mary E. Borja (*pro hac vice*)

mborja@wileyrein.com

Ashley E. Eiler (*pro hac vice*)

aeiler@wileyrein.com

Nicole Audet Richardson (*pro hac vice*)

nrichardson@wileyrein.com

WILEY REIN LLP

1776 K Street NW

Washington, DC 20006

Phone: (202) 719-7000

Fax: (202) 719-7049

Counsel for Alan M. Dershowitz

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been electronically filed through the Clerk of Broward County by using the Florida Courts eFiling Portal and thus served by electronic mail (email) at email address: jsx@searcylaw.com, mep@searcylaw.com, scarolateam@searcylaw.com to: **Jack Scarola, Esq.**, Searcy Denney Scarola Barnhart & Shipley, P.A., Counsel for Plaintiff, 2139 Palm Beach Lakes Blvd., West Palm Beach, Florida 33409, as well as joni@utah.gov to: **Joni J. Jones, Esq.**, Assistant Utah Attorney General, Counsel for Plaintiff Cassell, 160 East 300 South, Salt Lake City, Utah 84114 this 11th day of December, 2015.

By: s/Thomas E. Scott
THOMAS E. SCOTT
FBN: 149100
STEVEN R. SAFRA
FBN: 057028

EXHIBIT A

IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL
CIRCUIT IN AND FOR BROWARD COUNTY, FLORIDA

CASE NO.: CACE 15-000072

BRADLEY J. EDWARDS and PAUL G.
CASSELL,,

Plaintiffs,

vs.

ALAN M. DERSHOWITZ,

Defendant.

VIDEOTAPE DEPOSITION OF

ALAN M. DERSHOWITZ

VOLUME 1

Pages 1 through 179

Thursday, October 15, 2015
9:31 a.m. - 4:13 p.m.

Cole Scott & Kissane
110 Southeast 6th Street
Fort Lauderdale, Florida

Stenographically Reported By:
Kimberly Fontalvo, RPR, CLR
Realtime Systems Administrator

1 BY MR. SCAROLA: 11:23:52

2 Q. But they wouldn't tell you who? 11:23:53

3 A. They wouldn't show me any letter. 11:23:55

4 Q. That's not my question. Did they tell 11:23:58

5 you -- did you ask who contacted Leslie Wexner?

6 A. The first answer was [REDACTED] 11:24:07

7 lawyer.

8 I then subsequently learned that among 11:24:11

9 those who contacted Leslie Wexner's lawyers was

10 David Boies and Sigrid McCawley.

11 Q. Not Bradley Edwards, correct? 11:24:24

12 MR. SCOTT: Objection as to the form. 11:24:27

13 BY MR. SCAROLA: 11:24:28

14 Q. Correct? 11:24:29

15 A. I was not given the name Bradley Edwards 11:24:30

16 at that time. But was subsequently told by David

17 Boies that Bradley Edwards and Paul Cassell --

18 MS. McCAWLEY: I'm going to object to the 11:24:43

19 extent this reveals any conversations that

20 happened in the context of settlement

21 discussions.

22 MR. SCOTT: Okay. Note your objection. 11:24:48

23 Go ahead.

24 A. That I was ultimately told by David Boies 11:24:52

25 that he had done an extensive investigation of the

1 allegations against Leslie Wexner and had concluded
2 that they were --

3 MS. McCAWLEY: Again, I'm going to object 11:25:05
4 to this has happened in the context of
5 settlement --

6 A. -- false. 11:25:07

7 MS. McCAWLEY: -- negotiations. I'm going 11:25:07
8 to move for sanctions if information is
9 revealed that happened in the context of
10 settlement discussions.

11 MR. SCOTT: I don't know whether -- I 11:25:12
12 don't believe there were settlement
13 discussions. But even if they weren't, they
14 would still be admissible.

15 A. Let me continue -- 11:25:21

16 MR. SCOTT: For discovery purposes. 11:25:22

17 A. -- that David Boies had done -- 11:25:23

18 MS. McCAWLEY: I disagree. I think we're 11:25:24
19 going to have to take this to the judge, then;
20 if we're going to reveal settlement
21 conversations in this conversation, then we
22 need to go to the judge on it.

23 MR. SCOTT: Whatever you need to do. 11:25:31

24 A. Let me continue the -- what he told me. 11:25:33

25 That David Boies had --

1 absolutely, categorically lying. So I am completely
2 aware that never, until the lies were put in a legal
3 pleading at the end of December 2014, it was never
4 alleged that I had any sexual contact with V [REDACTED]

5 [REDACTED]
6 I know that it was alleged that I was a 11:38:46
7 witness to Jeffrey Epstein's alleged abuse and that
8 was false. I was never a witness to any of Jeffrey
9 Epstein's sexual abuse. And I wrote that to you,
10 something that you have falsely denied. And I stand
11 on the record. The record is clear that I have
12 categorically denied I was ever a witness to any
13 abuse, that I ever saw Jeffrey Epstein abusing
14 anybody.

15 And -- and the very idea that I would 11:39:18
16 stand and talk to Jeffrey Epstein while he was
17 receiving oral sex from [REDACTED] which she
18 swore to under oath, is so outrageous, so
19 preposterous, that even David Boies said he couldn't
20 believe it was true.

21 MS. McCAWLEY: I object. I object. I'm 11:39:40
22 not going to allow you to reveal any
23 conversations that happened in the context of a
24 settlement discussion.

25 THE WITNESS: Does she have standing? 11:39:46

1 A. We actually talked about that. And -- 12:11:47

2 Q. Who's the "we"?

3 MR. SIMPSON: Don't disclose any -- 12:11:53

4 THE WITNESS: Okay -- 12:11:53

5 MR. SIMPSON: -- lawyer-client -- 12:11:54

6 A. I had conversations about that with 12:11:55

7 appropriate persons, yes. And I discussed it with

8 Wexner's lawyers.

9 BY MR. SCAROLA: 12:12:07

10 Q. Are you answering yes to my question that 12:12:08

11 you have filed a criminal complaint?

12 A. Not yet. 12:12:12

13 Q. Okay. So it has been ten months since you 12:12:14

14 allegedly became aware of that suborning of perjury

15 and some eight months since your allegedly having

16 become aware of the extortion plot, but you have

17 filed no criminal complaints against anyone,

18 correct?

19 A. To answer that question requires me to 12:12:40

20 disclose conversations I had with David Boies. I

21 would love to answer that question.

22 Q. No, sir, it does not. 12:12:48

23 A. Yes, it does. 12:12:49

24 MR. SCOTT: Whoa, you can't -- how can you 12:12:49

25 say --

1 BY MR. SCAROLA: 12:12:51

2 Q. Whether you filed a criminal complaint or 12:12:51

3 not.

4 A. Yes, it does. 12:12:52

5 MR. SCOTT: Please, Jack, he can't say 12:12:53

6 that.

7 A. It does involve conversation I had with 12:12:54

8 David Boies.

9 BY MR. SCAROLA: 12:12:57

10 Q. Well, in that case, in light of the fact 12:12:57

11 that that is a matter that will be addressed by the

12 Court, we'll save that question for another time.

13 A. I'm anxious to answer it. 12:13:05

14 Q. And I'm anxious to get an answer. 12:13:09

15 A. Well, I hope we can agree I should be able 12:13:10

16 to answer it.

17 Q. Have we exhausted your recollection of the 12:13:20

18 details of conversations that you had with Rebecca

19 and Michael?

20 A. About the substance of what she told me. 12:13:27

21 There were many conversations involving would she do

22 this, would she do that. But the conversations, the

23 substance we've exhausted.

24 Q. Okay. Well -- 12:13:40

25 A. That is A, B, C, D, E, as I said, those -- 12:13:40

EXHIBIT B

IN THE CIRCUIT COURT OF THE
SEVENTEENTH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY,
FLORIDA

CASE NO.: CACE 15-000072

EDWARDS, *et al.*,

Plaintiffs / Counterclaim Defendants,

v.

DERSHOWITZ,

Defendant / Counterclaim Plaintiff.

**AFFIDAVIT OF ALAN M. DERSHOWITZ
REGARDING MEETINGS WITH DAVID BOIES**

A. Introduction

1. My name is Alan M. Dershowitz. I make this declaration on personal knowledge concerning my discussions with David Boies about [REDACTED]
2. I have known attorney David Boies, professionally, for many years. David Boies's law firm, Boies Schiller & Flexner, LLP, currently represents [REDACTED]
[REDACTED] Ms. [REDACTED] has made horrible, untrue accusations about me in an action pending in federal court (the "CVRA action"), where Ms. [REDACTED] is represented by Bradley Edwards and Paul Cassell, the plaintiffs in this action.
3. Since the Spring of 2015, I have had conversations with Mr. Boies about Ms. [REDACTED]'s accusations and the many ways in which they are verifiably untrue.
4. Over the course of several conversations in person, over the phone, and on Skype, Mr. Boies repeatedly stated that he did not believe the allegations that Ms. [REDACTED] had made against me were factually true. He also stated that the

decision to name me in the CVRA lawsuit by Messrs. Edwards and Cassell was both "stupid" and "wrong", that they had undermined the interests of their client, and that after reviewing the evidence I presented to him, he believed that Ms. [REDACTED] had mistakenly identified me.

5. Mr. Boies repeatedly stated that he had absolutely no authority to settle the pending case between me and Messrs. Cassell and Edwards. He told me that our conversations were an opportunity for me to provide documentary evidence that Ms. [REDACTED]'s allegations about me were untrue, so that he might convince Ms. [REDACTED] that she was mistaken in naming me in the CVRA suit. I explained to Mr. Boies that I was willing to provide him with the most minute details of my daily life because I wanted Ms. [REDACTED] publicly to recant her false statements. At no point since Ms. [REDACTED] made public her allegations against me was I involved in settlement negotiations with Mr. Boies, nor is there any claim or lawsuit between myself and Mr. Boies's client, Ms. [REDACTED], to settle. There is, however, the critical matter of clearing my good name and restoring my reputation.

B. Summary of What Mr. Boies Told Me

6. When I first spoke with Mr. Boies regarding Ms. [REDACTED]'s allegations about me, I told him that I was assembling documentation that showed that I could not have been in the locations where Ms. [REDACTED] said she had sex with me. According to my contemporaneous notes, Mr. Boies said that he was:

"very much upset at the fact that my name was included in the federal pleading... He proposed the following way of going forward. He would like me to bring my timeline of evidence to him, Sigrid McCauley and to [REDACTED] in an effort to persuade Roberts that I

could not have been at the places where she claims to have had sex with me. He hopes that when she sees my evidence she will acknowledge that she made a mistake. He said it won't be easy for her to do that, but that it would be the best thing for her and her case to acknowledge her mistake. Again he repeated that if she refuses to do that, he could not ethically continue to represent her and would leave the matter to the other two lawyers. ... The meeting was entirely amicable and I came away convinced that David Boies firmly believed that I have been falsely accused and wanted to make it right by getting me out of the case and by having her withdraw her false accusation."

7. At a subsequent meeting he told me that:

"the lawyers who put your name in the federal pleading, not only did a stupid thing that hurt their clients, they also did the wrong thing. They never should have accused you of so heinous a crime without checking and double checking, the way I did with the person I called."

8. He also told me that he believes that Messrs. Edwards and Cassell had a "conflict of interest" with their client Ms. [REDACTED]

9. At that same meeting, according to my contemporaneous notes, Mr. Boies also said in front of several witnesses that:

"His goal was to persuade [REDACTED] that she was mistaken in identifying me as a person with whom she had sex. He said he thinks that she actually believes that, but she is mistaken. I challenged his view that she actually believes she had sex with me, pointing to the fact that she has also said that she had dinner with Bill Clinton and Al Gore and his wife on the island. David responded by saying "I have never challenged Virginia with regard to her statements about Al and Tipper Gore and I am not vouching for her general credibility, but I think she has come to believe the story about you."

10. At the second and third meetings, I agreed to show Mr. Boies evidence proving my location for the duration of the time period for which Ms. [REDACTED] was associated with Mr. Epstein. My research-assistant, Nicholas Maisel, compiled hundreds of pages of credit card statements, phone records, interview records, class schedules, and other documentation, and presented it to Mr. Boies. My contemporaneous notes from the third meeting reflect the following:

"Boies reviewed our documents, focusing on several months during two years. He asked my research assistant numerous questions and requested that he be shown the original records, especially cell phone records. He said that the records were very persuasive, very complete and very compelling. I told him that we could provide even more documentation, and that what he had seen was merely a work in progress. He said that the more complete the records the better he would be able to persuade [REDACTED] and her other lawyers that it was impossible that I could be the person with whom she had six sexual encounters on the island, New Mexico, the airplane and Epstein's home in Palm Beach and New York. He seemed particularly shocked

when I told him that Virginia had sworn that she gave Epstein oral sex while I stood next to him talking to him. He asked Sigrid to show him the affidavit in which she made that claim and he seemed to be shocked by it."

11. On several occasions, I asked Mr. Boies what his next step would be and he told me that he and his law firm partner, Sigrid McCawley, would meet with Ms. [REDACTED] and tell her that although she might believe she had sexual contact with Professor Dershowitz, they had reviewed the documentary evidence and "are convinced that your belief is wrong." They said they would explain to her how she could have, at her age and under the circumstances, "misidentified somebody." He said he would tell her that one thing is clear: "Your conclusion is simply wrong."
12. Mr. Boies also told me that the documents he reviewed would "make it impossible for you to have been in the island, or on the ranch" during the relevant time period.

C. Detailed Description of Meetings with Mr. Boies

First Meeting with David Boies (19 May 2015)

13. My first meeting with Mr. Boies regarding the allegations made against me by Ms. [REDACTED] occurred on 19 May 2015 in New York. A mutual friend of ours, David Stone, arranged and attended the meeting. Mr. Stone is an attorney but he is not counsel for me or for Messrs. Edwards or Cassell (or for [REDACTED]).
14. At the meeting, after I told Mr. Boies that my records demonstrated that Ms. [REDACTED] allegations could not be true, he told me that he was very upset that my name had been included in the federal pleading. He described the decision of Messrs. Edwards and Cassell to "name names" in the CVRA action as a self-

inflicted wound. He said that had any of Ms. [REDACTED]'s representatives asked his opinion, he would have opposed the inclusion of any names in the federal filing, including my own.

15. Mr. Boies further stated during our meeting that he was now convinced that Ms. [REDACTED] was mistaken in naming me as someone with whom she had sex. He said that it was his obligation to try to persuade her to acknowledge that I could not have been among the people with whom she had sex. He said that if he failed to persuade her of that, he would leave her representation to Messrs. Edwards and Cassell and no longer represent her. He said that although he is always reluctant to drop a client, especially in a pro bono case, he would feel comfortable doing that in this case because she is adequately represented by her two other lawyers. He said that it would be a win-win both for me and for Ms. [REDACTED], were she now to acknowledge that she had made a mistake in naming me. He said that he was convinced that I did not and could not have had sex with her.

16. Mr. Boies also told me that Ms. [REDACTED] had informed him that she had sex with another prominent individual, who had not been identified by name in the federal suit filing. He did not name this individual to me at that time, but he said he had spoken to him, and was now convinced that Ms. [REDACTED] was mistaken regarding her allegations against him as well. He described Ms. Roberts as an impressionable girl who was totally confused about who it was she had sex with while she was associated with Mr. Epstein many years ago. Mr. Boies said he had persuaded Ms. [REDACTED] not to name this third individual, and so far she had

accepted his advice. I learned the name of the prominent businessman whom Ms. [REDACTED] has also accused from one of Ms. Roberts' closest friends who called me. I confirmed the account with the businessman's attorney.

17. Mr. Boies proposed that we should meet again at a later date, together with Ms. McCawley, and perhaps with Ms. [REDACTED] herself. Mr. Boies asked me to bring my timeline of evidence, so that I might persuade Ms. [REDACTED] that I could not have been at the places where she claims to have had sex me. He said that he hoped she would see the evidence and acknowledge that she made a mistake, but that it would not be easy for her to do so.

18. After the conclusion of this first meeting, I called one of my secretaries, Ms. Maura Kelly, and dictated my recollection of events. I felt entirely confident that Mr. Boies firmly believed that I had been falsely accused, and that he wanted to make it right by getting Ms. [REDACTED] to withdraw her false accusation.

Second Meeting With David Boies (1 June 2015)

19. After corresponding further with Mr. Boies and Mr. Stone, we agreed to all meet again on 1 June 2015, together with Ms. McCawley, another woman from Mr. Boies's firm whose name I do not recall, and my research assistant, Mr. Maisel.

20. I brought with me to the second meeting a timeline detailing my locations between August 1999 and September 2002—the time period for Ms. [REDACTED] accusations against me—based on my financial and cell phone records, my daily calendar, my wife's calendars, my class schedules, and other documentation.

21. Before showing Ms. McCawley and Mr. Boies the timeline and the supporting documentation, Mr. Boies and I talked at length about the CVRA case, and he

reiterated many of the same points that he made at our first meeting. He stated that he felt that the lawyers—Messrs. Edwards and Cassell—were facing a conflict of interests by suing me for defamation, while continuing to represent Ms. [REDACTED] in the CVRA case. Mr. Boies stated that this meeting was a chance for me to show him and Ms. McCawley the evidence that I had compiled proving that Ms. [REDACTED]'s allegations in my regard were false.

22. Mr. Boies reviewed the timeline for approximately an hour and a half, and repeatedly asked to see the supporting documentation, in particular cell phone records. I told him that the records were quite thorough but that because the events in question had happened over a decade ago, I was still working on collecting documentation. He said that the more complete the records were, the better he would be able to persuade Ms. [REDACTED] that it was impossible that I could be the person with whom she had six sexual encounters.
23. At the end of the meeting, Mr. Boies stated that he found the evidence extremely compelling but that before he met with Ms. [REDACTED] to try and convince her of my innocence, he wanted the record to be as complete as possible. He told me that: "the lawyers who put your name in the federal pleading not only did a stupid thing that hurt their clients, they also did the wrong thing. They never should have accused you of so heinous a crime without checking and double checking, the way I did with the person I called." He said that we should meet again after I had assembled all of the relevant records. I agreed, and told him I would be in touch as soon as possible. After the meeting, I wrote an email to one of my secretaries, Sarah Neely, documenting my recollection of events.

Third Meeting with David Boies (6 July 2015)

24. The third meeting took place on 6 July 2015. Mr. Boies, Mr. Maisel, Mr. Stone, and Ms. McCawley attended in person, and I participated by videoconference, through Skype. Over the course of the meeting, Mr. Boies conducted a detailed examination of the timeline that Mr. Maisel had put together, and repeatedly asked to look at phone records and financial documentation.
25. At the conclusion of the meeting, Mr. Boies told me that he would meet with Ms. Roberts in the near future and try to convince her that she had made a mistake in identifying me as someone she had sex with.
26. Before and after these meetings, I have had numerous telephone conversations with Mr. Boies about Ms. R [REDACTED], including as recently as this weekend.

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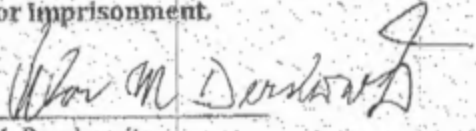
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I understand that I am swearing or affirming under oath to the truthfulness of the claims made in this affidavit and that the punishment for knowingly making a false statement includes fines and/or imprisonment.

Dated: December 10, 2015


Alan M. Dershowitz

STATE OF New York

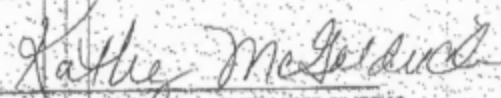
COUNTY OF New York

Sworn to or affirmed and signed before me on

by

December 10, 2015

Alan M. Dershowitz


NOTARY PUBLIC or DEPUTY CLERK

[Print, type, or stamp commissioned name of notary or clerk.]

KATHY MCGOLDRICK
Notary Public, State of New York
Qualified in Nassau County
No. 01MC6312831
My Commission Expires 10/06/2018