TONJA HADDAD, PA

315 SE 7th Street
Suite 301
Fort Lauderdale, FL 33301

[redacted] telephone
[redacted] facsimile

December 5, 2012

Via Hand Delivery
The Honorable David Crow
Palm Beach County Courthouse
205 N Dixie Highway
Room 9.1215
West Palm Beach, FL 33401

Re: *Epstein v. Rothstein, et al.*

Dear Judge Crow:

Attached hereto please find a copy of Mr. Epstein's Memorandum of Law in of Opposition to Mr. Edwards's Second Renewed Motion for Leave to Assert a Claim for Punitive Damages, and all accompanying exhibits. This Motion is set for hearing on Monday, December 17, 2012, at 10:00AM. Please feel free to contact my office should any additional information be required.

Sincerely,
TONJA HADDAD, PA

Tonja Haddad Coleman, Esq.
for the firm

cc: Jack Scarola, Esq.
All parties on Service List

JEFFREY EPSTEIN,

Plaintiff,

vs.

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

Defendants.
_____/

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

CASE NO.: 502009CA040800XXXXMBAG

JUDGE: CROW

PLAINTIFF/COUNTER-DEFENDANT JEFFREY EPSTEIN'S MEMORANDUM OF LAW IN OPPOSITION TO DEFENDANT/COUNTER-PLAINTIFF BRADLEY EDWARDS'S SECOND RENEWED MOTION FOR LEAVE TO ASSERT A CLAIM FOR PUNITIVE DAMAGES

Plaintiff/Counter-Defendant Jeffrey Epstein ("Epstein"), by and through his undersigned counsel and pursuant to Rule 1.190(f) of the *Florida Rules of Civil Procedure* and §768.72 of the *Florida Statues*, hereby files this Memorandum of Law in Opposition to Defendant/Counter-Plaintiff Bradley Edwards's ("Edwards") Second Renewed Motion for Leave to Assert Claim for Punitive Damages. In support thereof, Epstein states:

PROCEDURAL HISTORY OF PUNITIVE DAMAGES IN THIS CASE

On October 19, 2010, Defendant/Counter-Plaintiff Bradley Edwards (hereinafter "Edwards") filed his first Motion for Leave to Assert Claim for Punitive Damages against Plaintiff/Counter-Defendant Jeffrey Epstein (hereinafter "Epstein"). This Honorable Court denied that motion on July 13, 2011, after an extensive hearing, citing as grounds therefor the glaring procedural deficiencies contained in Edwards's Motion. On August 17, 2012, Edwards filed a Renewed Motion for Leave to Assert Claim for Punitive Damages, which was identical in all material respects to the original Motion that this Court denied. Upon receipt of Epstein's Motion for Sanctions and Memorandum of Law

in Opposition to Edwards's Renewed Motion, Edwards unceremoniously canceled the specially-set hearing on his Renewed Motion for Leave to Assert a Claim for Punitive Damages.

On October 19, 2012, Edwards filed his Second Renewed Motion for Leave to Assert a Claim for Punitive Damages. This Second Renewed Motion, however, though padded with irrelevant, sensational and conclusory statements masquerading as fact, is as procedurally and legally deficient as the first two motions. Through all the smoke and mirrors of its ill-conceived contentions, the motion is undeniably a "recycled version" of Edwards's Motion for Summary Judgment. Even a cursory review of the document irrefutably establishes same, as Edwards neglected to change the headings in the Motion, failed to remove the "summary judgment standard," overlooked the removal of each and every prayer for relief in which he asks the Court to grant him Summary Judgment, and utterly failed to include any argument, case law, or submission that would establish that his Summary Judgment argument bears any relation to his claim for punitive damages.[1] Edwards's Motion further sets out, in detail, the standard for Summary Judgment, yet fails *anywhere* to explain or delineate how a Motion *which was neither argued nor granted* is applicable to a claim for punitive damages. Edwards is deliberately attempting to confuse the central issue he is required to argue in this Motion; to wit: providing proffered evidence showing entitlement to plead a claim for punitive damages. Nowhere in Edwards's motion does he even attempt to provide a legal standard for punitive damages or proffer any facts that come remotely close to satisfying that standard. Moreover, for yet a third time Edwards fails to heed this Court's basic instructions to

[1] Epstein submits that there is no case law that states that the standard for summary judgment; to wit: "there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law," is in any way related to a "reasonable showing that would prove the basis for punitive damages."

provide "**a written summary of the evidentiary proffer with appropriate page and line citations, deposition testimony, [and] affidavits.**" *See Transcript from July 13, 2011 hearing page 36; line 9- page 37; line 3* (emphasis added). Instead, Edwards provides the Court with a heap of conclusory allegations and general references (without the requisite citations) to previously filed documents, including two contradictory affidavits and his purported "Statement of Undisputed Facts." Accordingly, Edwards again failed to heed this Court's prior Order denying Edwards's First Motion for Leave to Assert a Claim for Punitive Damages and to abide by the basic requisites to assert a motion to plead punitive damages. For these reasons, as explained more fully below, Edwards's Second Renewed Motion for Leave to Assert Claim for Punitive Damages must be denied.

SUMMARY OF THE ARGUMENT

Edwards's Second Renewed Motion for Leave to Assert a Claim for Punitive Damages is both legally and procedurally deficient. First, Edwards completely disregards the requisites delineated by this Court, §768.72 of the *Florida Statutes*, and *Beverly Rehabilitation Services, Inc. v. Meeks*, 778 So. 2d 322 (Fla. 2d DCA 2000) and its progeny with respect to properly pleading for leave to assert a claim for punitive damages. Edwards's Second Renewed Motion provides neither the legal standard for recovery of punitive damages nor proffered evidence that could possibly satisfy that legal standard. In fact, his Motion is devoid of any reasonable basis upon which an award of *any* damages, much less punitive damages, could be recovered. Other than inserting into his twenty-nine page recycled Summary Judgment Motion a page and a half of "applicable law" regarding Florida's burden of proof for asserting a claim for punitive

damages, Edwards has re-filed, in its entirety, his Motion for Summary Judgment, and attached in support thereof affidavits drafted, executed, and filed more than 2 years ago, which are neither relevant nor factually supportive for his assertion of entitlement to plead punitive damages. Moreover, Edwards's contradictory statements in these two stale, extraneous, and obviously self-serving affidavits place the very reliability of his only proffers squarely in question.[2]

To the extent that any proffered evidence from Edwards establishes anything at all, it only makes it abundantly clear that any and all actions taken by Epstein for which Edwards is now suing occurred *during the pendency of litigation*, thereby falling under the very same litigation privilege relied upon by Edwards in his Motion for Summary Judgment as barring suit, and consequently, any recovery of damages. In addition to these glaring legal deficiencies, for a yet a third time, Edwards cavalierly disregards the applicable *Florida Rules of Civil Procedure* and this Court's specific instructions for properly pleading a punitive damages motion by failing to provide a properly referenced, cited, and written summary of his evidentiary proffer.

Second, Edwards's Second Renewed Motion does not, and in fact will never be able to, proffer any facts that establish that Mr. Epstein could ever be found "guilty of intentional misconduct or gross negligence" as is required to recover punitive damages under §768.72 of the *Florida Statutes* . Both Edwards's own Motion and his responses to

---

[2] Referring to Epstein's high-profile friends in paragaph 18 of Edwards's April 23, 2010 affidavit, it is Edwards's sworn testimony that "We have no information that any of these people (other than Alan Dershowitz [Mr. Epstein's lawyer who would be subject to attorney-client privileges and should also not have been noticed for deposition for precisely that reason]) have spoken to Mr. Epstein about Jane Doe or any of the other specific victims of Mr. Epstein's molestation." This prior sworn testimony is in direct contravention to Edwards's claims in his September 21, 2010 affidavit that each of Mr. Epstein's high profile friends that had been noticed for depositions were noticed because it was thought that they might have relevant information relating to Epstein's alleged molestations. See Affidavit of Edwards, dated September 21, 2010, ¶¶ 13-17. At best, it shows that Edwards's self-contradicting testimony is unreliable and cannot serve as the basis for a reasonable proffer.

Epstein's discovery requests, as discussed in more detail below, conclusively establish that Edwards cannot identify *one* act purportedly taken by Epstein with the requisite intent or degree of gross negligence. Moreover, because the record evidence in this case is absolutely devoid of any factual basis whatsoever to support Edwards's underlying claims for Abuse of Process and Malicious Prosecution, there can be no claim for punitive damages. As such, Edwards's Second Renewed Motion must be denied.

I. EDWARDS FAILS TO SATISFY THE PLEADING REQUIREMENTS TO ASSERT A CLAIM FOR PUNITIVE DAMAGES

It is well established that as the movant, Edwards bears the burden of demonstrating entitlement to punitive damages by a "reasonable showing by evidence in the record or proffered by the claimant which would provide a reasonable basis for the recovery of such damages." § 768.72 FLA. STAT. (2012). A claim for punitive damages will not stand, absent allegations of supporting ultimate facts. *Legare v. Music & Worth Const., Inc.*, 486 So. 2d 1359 (Fla. 1st DCA 1986); FLA. R. CIV. P 1.190(f). *See also Will v. Systems Engineering Consultants*, 554 So. 2d 591, 592 (Fla. 3d DCA 1989). Section 768.72 governs punitive damages, and provides, in relevant part:

> (1) In any civil action, **no claim for punitive damages shall be permitted unless there is a reasonable showing by evidence in the record or proffered by the claimant which would provide a reasonable basis for recovery of such damages.** The claimant may move to amend her or his complaint to assert a claim for punitive damages as allowed by the rules of civil procedure. The rules of civil procedure shall be liberally construed so as to allow the claimant discovery of evidence which appears reasonably calculated to lead to admissible evidence on the issue of punitive damages. No discovery of financial worth shall proceed until after the pleading concerning punitive damages is permitted.
> (2) A defendant may be held liable for punitive damages only if the trier of fact, **based on clear and convincing evidence, finds that the defendant was personally guilty of intentional misconduct or gross negligence.** As used in this section, the term:
> (a) "Intentional misconduct" means that the **defendant had actual**

> **knowledge of the wrongfulness of the conduct and the high probability that the injury or damage to the claimant would result and, despite that knowledge, intentionally pursued that course of conduct**, resulting in injury or damage.
> (b)"Gross negligence" means that the **defendant's conduct was so reckless or wanting in care that it constituted a conscious disregard or indifference to the life, safety, or rights of persons exposed to such conduct**.

§ 768.72 FLA. STAT. (2012) (emphasis added). The Florida Supreme Court, in analyzing the plain meaning of § 768.72, stated that it "now requires a plaintiff to provide the court with a reasonable evidentiary basis for punitive damages before the court may allow a claim for punitive damages to be included in a plaintiffs complaint." *Globe Newspaper Company v. King*, 658 So. 2d 518, 520 (Fla. 1995). Additionally, Rule 1.190(f) of the *Florida Rules of Civil Procedure* governs amendments to pleadings to assert a claim for punitive damages and provides:

> A motion for leave to amend a pleading to assert a claim for punitive damages shall make a reasonable showing, by evidence in the record or evidence to be proffered by the claimant, that provides a reasonable basis for recovery of such damages. The motion to amend can be filed separately and before the supporting evidence or proffer, but each shall be served on all parties at least 20 days before the hearing.

FLA. R. CIV. P 1.190(f).

In the case at hand, Edwards completely disregards the applicable law and its requirement to make a reasonable showing of "intentional misconduct" or "gross negligence" as such terms are defined in §768.72 of the *Florida Statutes*. Nowhere in Edwards's motion does he even acknowledge his obligation to cite in the record or proffer reasonable evidence that Epstein "**had actual knowledge of the wrongfulness of the conduct and the high probability that the injury or damage to the claimant would result and, despite that knowledge, intentionally pursued that course of**

conduct"; or that Epstein's "conduct was so reckless or wanting in care that it constituted a conscious disregard or indifference to the life, safety, or rights of persons exposed to such conduct." § 768.72(2) FLA. STAT. (2012) (emphasis added). Edwards's Motion fails to recite any facts to demonstrate that Epstein's state of mind and conduct rise to the substantially heightened level required by the punitive damages statute. As a result, Edwards fails to provide this Court, or the party against whom punitive damages are sought, with any evidentiary basis, let alone a reasonable one, for punitive damages.

Moreover, Edwards has, for yet a third time, undeniably neglected to meet even the procedural requirements to satisfy his burden of proof of proffering evidence that meets the heightened punitive damages standard. This Court, in denying Edwards's First Motion for Leave to Assert a Claim for Punitive Damages declared:

> [Rule] 1.190, which is the rule on amended and supplemental pleadings, was amended in two thousand, I believe, 2003 pursuant to Florida Statute 768.72 to give guidance as to how you go about doing this. And the footnotes to the Civil Rules of Procedure… cites it to [sic], it says that subsection is amended to comply with the case of Beverly, *Beverly Health And Rehabilitation Services, Inc. versus Meeks*. And I have been applying this case before they actually incorporated it into the rules, but that case specifically said, it set up a procedure, at least, in the Third District for motions for punitive damages. And, I'll quote from paragraph – I don't know what page it is here. But, basically, says this – and I've been applying this in the past as well. **Accordingly, it is and shall be the practice of this Court to require a written summary of the evidentiary proffer with appropriate page and line citations, deposition testimony, affidavits** need to be filed and served in advance of the hearing so the defendant will have a reasonable opportunity. The motion doesn't do that.

See Transcript from July 13, 2011 hearing page 36; line 9- page 37; line 4 (emphasis added).

This Court directed Edwards to adhere to the following straightforward,

unadorned instructions:

> I want you to make a motion pursuant to what I have just said. **I don't want any incorporated things, you know . . . You know, when you incorporate something else that doesn't work for me. I need it in front of me. I need the page, line so I can read it as a motion . . . Again, Mr. Scarola, we're going to do it my way.**

Transcript from July 13, 2011 hearing page 38; lines 4-25 (emphasis added).

Because Edwards's original Motion failed to provide "**a written summary of the evidentiary proffer with appropriate page and line citations, deposition testimony, affidavits,**" the Court determined that Motion to be procedurally deficient and denied same. The instant Motion is equally as procedurally deficient and must likewise be denied.

Edwards, yet again, blatantly disregards this Court's Order. He provides no written summary of the evidentiary proffer. Instead his motion is scattershot with conclusory and misleading statements and requests that the Court make negative inferences, all masquerading as facts. His specific page and line references, to the extent he provides them at all, are minimal, choosing, more often than not, to provide cryptic general references to Epstein's "Complaint" (in nearly all cases failing to specify to which version of the Complaint he is referring) and to again impermissibly incorporate by general reference his so-called "Statement of Undisputed Facts." By failing to specify to which of Epstein's Complaints he is referring, as well as the specific allegations, page, and paragraph numbers upon which the purported evidence can be found, Edwards makes it impossible for the Court or Epstein to evaluate Edwards's proffer. Moreover, Edwards numerous general references, without page or paragraph numbers, to his voluminous "Statement of Undisputed Facts" are precisely what this Court made clear would not be

tolerated in any renewed motion by Edwards. Additional examples of the utter disregard for proper procedure in Edwards's motion are legion, but all lead to the same inevitable conclusion: Edwards has deliberately "muddied the waters" to conceal his inability to proffer evidence on the central issues in this motion; to wit: whether, in the specific litigation against Edwards, Epstein engaged in "intentional misconduct" or "gross negligence" as such terms are defined in § 768.72 of the *Florida Statutes*, thus entitling him to plead a claim for punitive damages. As such, Edwards fails to comply with the Florida Rules of Civil Procedure, § 768.72 of the *Florida Statutes*, and this Court's very specific requirements for a motion for leave to assert a claim for punitive damages, and his Motion must be denied.

Separate and apart from Edwards flagrant disregard for the procedural requirements of this Court and applicable law, Edwards fails to provide one scintilla of proffered evidence in his Second Renewed Motion which, if true, would lead to any award of damages at all; much less punitive damages. Indeed, in his introductory sentence Edwards asserts that Epstein's culpability is somehow based upon "**[t]he pleadings and discovery taken to date . . .**" *See Edwards's Second Renewed Motion for Leave to Assert a Claim for Punitive Damages*, page 4 (emphasis added), which is attached hereto as "Exhibit A." Not only does this mere reference to the "pleadings and discovery" provide one more example of Edwards abject failure to satisfy this Court's prior Order and the seminal case law regarding "proffered evidence," but it also clearly demonstrates that the actions for which Edwards is seeking damages occurred *in the course of litigation*; which, based on the very same arguments raised by Edwards in the instant Motion, bar Edwards's claim against Epstein. *See Beverly Rehabilitation Services,*

[4] Arguably, there is no legally permissible reason to "go after those close to" a defendant.

Inc. v. Meeks, 778 So. 2d 322 (Fla. 2d DCA 2000). Accordingly, because Edwards has disregarded this Court's order and failed to properly plead a motion to assert a claim for punitive damages, his Motion must be denied.

II. EDWARDS CANNOT MEET THE THRESHOLD REQUIRED TO ASSERT A CLAIM FOR PUNITIVE DAMAGES BECAUSE HE CANNOT PROFFER ANY EVIDENCE OF ACTIONS TAKEN OUTSIDE OF THE LITIGATION

"A punitive award is proper only if the plaintiff proves every element of liability on the underlying cause of action." *Ault v. Lohr*, 538 So. 2d 454, 457 (Fla. 1989). Edwards cannot, and will not ever, meet this burden. Edwards has not, and cannot, proffer any evidence to satisfy this threshold because any and all actions purportedly taken by Epstein are protected by the litigation privilege. 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. *Levin, Middlebrooks, Moves & Mitchell, P.A. v. U.S. Fire Ins. Co.*, 639 So. 2d 606, 608 (Fla. 1994). The Florida Supreme Court explained the policy reasons for the litigation privilege and in so doing stated:

> In **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.** The rationale behind the immunity afforded to defamatory statements is equally applicable to other misconduct occurring during the course of a judicial proceeding. **Just as participants in litigation must be free to engage in unhindered communication, so too must those participants 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.**

Levin, 639 So. 2d at 608 (emphasis added).

As unequivocally proven by Edwards's own pleadings and discovery responses, the events giving rise to Edwards's purported claims against Epstein occurred *solely* in the conduct of the litigation. Epstein has not taken any action "outside the context of the judicial proceeding, such as . . . actions extrinsic to the litigation." *Suchite v. Kleppin*, 2011 WL 1814665, p.*3 (S.D. Fla. 2011) (citing 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).

For example, the record evidence as provided by Edwards himself establishes that Edwards bases his cause of action for Abuse of Process upon **"[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"** as **"perversion of process after its initial service."** *See Edwards's Third Amended Counterclaim,* paragraph 16 (emphasis added), which is attached hereto as "Exhibit B."

Likewise, in Epstein's Interrogatories to Edwards dated May 16, 2011, Edwards was asked to provide an exact and detailed description of the process alleged to be abusive, and in his response, served upon Epstein on June 10, 2011, Edwards responded **"every pleading, motion, notice and discovery request served by the Plaintiff on Bradley Edwards in this case."** *See Answers to Interrogatories filed June 10, 2011* attached hereto as "Exhibit C" (emphasis added). When asked for the dates upon which each and every purported abuse of process occurred, Edwards again replied: **"the date of service of each of the above as reflected on the Certificate of Service of each."** *See*

Exhibit C (emphasis added). Edwards has not pointed to, and indeed cannot point to, one act *outside of, or extrinsic to, the litigation.* Accordingly, because in the instant case the litigation privilege is applicable to the Abuse of Process claim, Edwards will not ever satisfy his burden, mandating denial of his Motion. *Levin, Middlebrooks, Moves & Mitchell, P.A. v. U.S. Fire Ins. Co.*, 639 So. 2d 606, 608 (Fla. 1994).

III. EDWARDS CANNOT MEET THE THRESHOLD REQUIRED TO ASSERT A CLAIM FOR PUNITIVE DAMAGES BECAUSE HE CANNOT PROFFER ANY EVIDENCE TO SUSTAIN THE UNDERLYING CAUSES OF ACTION

A. Edwards Cannot Meet the Threshold Required to Assert a Claim for Punitive Damages Because he Cannot Proffer any Evidence of Abuse of Process

Edwards did not, nor can he, assert the requisites to recover *any* damages under a claim for Abuse of Process. To properly do so, Edwards is required to plead and prove the following: 1) that the defendant made an illegal, improper, or perverted use of process after it issues *(i.e.*, improper willful acts during the course of a prior action or after the filing of the Complaint); 2) that the defendant had ulterior motives or purposes in exercising such illegal, improper, or perverted use of process; and 3) that as a result of such action on the part of the defendant, the plaintiff suffered damage. *S&I Investments v. Payless Flea Market, Inc.*, 36 So. 3d 909, 917 (Fla. 4th DCA 2010); *Peckins v. Kaye,* 443 So. 2d 1025, 1026 (Fla. 2d DCA 1983) ("The abuse consists not in the issuance of process, but rather in the perversion of the process after its issuance. The writ or process must be used in a manner, or for a purpose for which it is not by law intended."); *see also Biondo v. Powers*, 805 So.2d 67, 68 (Fla. 4th DCA 2002) ("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.").

Florida law is clear that in order to bring such a cause of action, there must be an act constituting misuse of process *after* the action was filed and process was served. *Della-Donna v. Nova University, Inc.*, 512 So.2d 1051, 1056 (Fla. 4th DCA 1987). Thus, the mere filing of a complaint, even if the defendant contends it was filed in order to harass the plaintiff, does not suffice. *Id.* at 1056 (defendant entitled to summary judgment based on plaintiff's failure to prove "any act which constituted misuse of process after it was issued."); *see also McMurray v. U-Haul Co, Inc.*, 425 So. 2d 1208, 1209-10 (Fla. 4th DCA 1983) (dismissing debtor's abuse of process counterclaim absent "allegation of a post-issuance act other than service of what was issued."). Most importantly, however, Edwards repeatedly asserts in his Second Renewed Motion for Leave to Assert a Claim for Punitive Damages that "Epstein's Complaint against Edwards was filed in the total absence of evidence to support any allegation of wrongdoing on the part of Edwards . . ." *See Edwards's Second Renewed Motion for Leave to Assert a Claim for Punitive Damages*, page 1. However, even assuming *arguendo* that Edwards could prove this assertion, the "maliciousness or lack of foundation of the asserted cause of action itself is actually **irrelevant** to the tort of abuse of process." *Marty v. Gresh*, 501 So. 2d 87, 90 (Fla. 1st DCA 1987) (emphasis added).

Here, Edwards's mere reference to only "actual process" that did nothing more than achieve that which it was designed to do is *not* an abuse of process, both barring his cause of action and, obviously, an award of *any* damages. *Biondo v. Powers*, 805 So.2d 67, 68 (Fla. 4th DCA 2002). Moreover, Edwards has failed throughout this litigation to make any allegations that the process upon which he relies in his Third Amended Counterclaim, and purportedly in his claim for punitive damages, contains any actions

constituting misuse of process *after* the action was filed, also barring his claim. Accordingly, because Edwards cannot, and has not, proffered any evidence of an Abuse of Process, his Motion must be denied.

B. Edwards Cannot Meet the Threshold Required to Assert a Claim for Punitive Damages Because he Cannot Proffer any Evidence of Malicious Prosecution

Likewise, Edwards has not, nor will he be able to, properly assert a claim for Malicious Prosecution. A Malicious Prosecution action requires that the plaintiff prove *each* of the following six elements: 1) a criminal or civil judicial proceeding was commenced against the plaintiff; 2) the proceeding was instigated by the defendant in the malicious prosecution action; 3) the proceeding ended in the plaintiff's favor; 4) the proceeding was instigated with malice; 5) the defendant lacked probable cause; and 6) the plaintiff was damaged. *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); *Adams v. Whitfield,* 290 So. 2d 49, 51 (Fla. 1974).

The case of *Jack Eckerd Corp. v. Smith*, 558 So. 2d 1060 (Fla. 1st DCA 1990) is instructive. In *Smith*, the court stated that in a malicious prosecution action, legal malice which may be inferred from the absence of probable cause, is not sufficient to support punitive damages unless "it encompasses a showing of moral turpitude or willful and wanton disregard of the plaintiff's rights, which presupposes the defendant's knowledge or awareness of the risk to plaintiff's rights, or evidence of excessive and reckless disregard of the plaintiff's rights. **Legal malice based solely upon the want of**

probable cause is not sufficient to support an award of punitive damages." *Id.* at 1063 (emphasis added). *See also Wilson v. O'Neal*, 118 So. 2d 101, 105 (Fla. 1st DCA 1960) ("Malice is not only an essential element of malicious prosecution but it is the gist of this cause of action."); *White v. Miami Home Milk Producers Ass'n,* 197 So. 125, 126 (Fla. 1940) (Malice is a fact to be proven by the plaintiff as it is "a necessary ingredient of the charge of malicious prosecution" and it is not synonymous with want of probable cause.). Edwards proffers no evidence of legal malice other than his asserted (and unsubstantiated) want of probable cause, and accordingly, Edwards's Motion must be denied.

Edwards asserts that Epstein's lawsuit against him was filed in the absence of probable cause to support wrongdoing, absent any damages, absent any intent to comply with discovery, and for the sole purpose to intimidate. *See Edwards's Second Renewed Motion for Leave to Assert a Claim for Punitive Damages*, page 1. While the law is clear that neither Edwards's Motion nor this Response in Opposition is the proper means through which to argue the merits of the case, Epstein would submit the following statement in rebuttal thereto:

First, with respect to the case being filed "in the absence of probable cause," notwithstanding the law expressly negating that argument above, *at the time Epstein filed his case against Edwards*, there existed the following uncontested, irrefuted, and undeniable facts: 1) The Federal Arrest and Indictment of Scott Rothstein (Edwards's Partner at RRA) for the largest Ponzi scheme in Florida's history; 2) Evidence provided by Rothstein admitting that Epstein's cases were used to further the Ponzi scheme; 3) Edwards serving as lead counsel and the supervising attorney over the cases Rothstein

admits were used to further the Ponzi Scheme; 4) a Florida Bar investigation into nearly one-third of the attorneys employed by RRA *where Edwards was a partner*; 5) discovery and investigation intensified considerably during the short six (6) months during which Edwards was at RRA (Edwards admits to over $200,000.00 in expenditures during that time, and according to Edwards's own privilege log there were more than 18 attorneys and staff members working on the Epstein cases at RRA); 5) the repeated use of a convicted felon (Ken Jenne) for investigating and prosecuting the cases against Epstein supervised by Edwards; and 6) Edwards and his partners at RRA were engaging in multiple actions that would be deemed "*outside the process,*" such as participating in hundreds of communications with the press (see Edwards's own Privilege Log), using the press to conduct investigations and participate in activities that are prohibited by attorneys, instructing others to "go after those close to Epstein[4]" (*see Cara Holmes's email to Edwards dated July 29, 2009 stating "I think our best bet is to go after those close to Epstein"*), setting depositions of wealthy and influential friends of Epstein who irrefutably had no knowledge of the underlying cases or, indeed, knowledge of any other claims against Epstein (*see footnote 2)*, and filing a Federal complaint against Epstein while at RRA that Edwards denied filing, and by Edwards's own admission he never served. *See Edwards's Answer to Epstein's Original Complaint*, Paragraph 8 and *Epstein's Request for Admissions and Edwards's Responses,* Paragraphs 7-9, attached hereto as composite "Exhibit D." Consequently, at the time the Complaint(s) against Edwards were filed, there was a factual basis upon which Epstein based his claim.

Second, the record evidence *does* establish not only that Edwards has suffered no damages, but also that as the "Plaintiff" he is now engaging in exactly the same activities

as those purportedly taken by Epstein with which Edwards took issue in his Third Amended Counterclaim and upon which he now bases his claim for damages. *See Edwards's Second Renewed Motion for Leave to Assert a Claim for Punitive Damages*, page 1. The record evidence shows that each of Edwards's Four Counterclaims were "filed in the total absence of evidence that [EDWARDS] had sustained damages as a consequence of any misconduct; [and] was filed in the absence of any intention to meet his own obligation to provide relevant and material discovery." *See Edwards's Second Renewed Motion for Leave to Assert a Claim for Punitive Damages*, page 1. For example, in Epstein's Third Set of Interrogatories to Defendant/Counter-Plaintiff Bradley J. Edwards ("hereinafter "Third Set of Interrogatories") Epstein's Interrogatory No. 1 asked Edwards to:

> identify each and every fact that supports your allegation set forth in your Second Amended Counterclaim by providing (a) a detailed description of the damages you allege you have suffered, including, but not limited to, those you claim have resulted in (1) injury to your reputation, and (2) interference with your professional relationship; and (b) a detailed description of the special damages you allege you have suffered, including but not limited to: (1) the loss of the value of your time diverted from your professional responsibilities, and (2) the cost of defending claims against you in this lawsuit,

Edwards responded:

> **The identification of "each and every fact that [*sic*] supports" specific allegations would require the disclosure of mental impressions and thought processes of counsel and is accordingly protected by work-production privilege.** Subject to and without waiving that privilege, Bradley Edwards has described the special damages he has sustained and will continue to sustain in the future in his currently pending counterclaim. He has been accused of immoral, unethical and illegal conduct impugning his professional integrity, his professional competence, and his fitness to practice law. Such accusations are defamatory per se and Florida Law conclusively presumes the damage that inevitably arises from such defamation. False accusations have been disseminated repeatedly throughout not only South Florida legal community but nationally and

internationally.

> In addition, Bradley Edwards has been obligated to divert time, effort and attention from the productive practice of his profession to defend against the tortuous misconduct of Epstein. Every minute diverted from his professional pursuits impeded his ability to advance the claims and interests of existing clients and precluded him from undertaking other and additional responsibilities. Time records made available in response to Epstein's Request to Produce detail (at a minimum) the extent of the diversion Mr. Edwards has suffered. Cost invoices for expenditures incurred in defending against Epstein's misconduct have also been made available in Response to Epstein's Request to Produce.[5] Those damages are ongoing and continuing in nature."

See Answers to Plaintiff's Third Set of Interrogatories to Bradley J. Edwards, page 3, attached hereto as "Exhibit D." Edwards's response was evasive, vague, and lacking in specificity. Moreover, Edwards impermissibly sought to invoke work product privilege as a shield to prevent disclosure of vital information necessary to Epstein to defend against Edwards's claim of damages.

Epstein further requested in Interrogatory No. 2 of Epstein's Third Set of Interrogatories that Edwards

> [e]xplain in detail how your reputation has been injured as the result of this action against you from the filing of the action to the present. With specificity, identify the following: (a) Your alleged reputation before the filing of this action; (b) Any and all persons who have made statements about your reputation after the filing of this action; (c) Any and all communications, written or verbal, about your reputation; and (d) the date, manner and substance of communications in which said statements have been made about your reputation,

Edwards responded with inflammatory language that was vague and irrelevant to the question asked. After first re-alleging to the response to question one (see above), he failed to provide one useable fact that might address the issue of damages: to wit;

> (a) Excellent; (b) None presently known except Epstein and his numerous

[5] Said items have not, to date, been provided, despite the request.

> lawyers including the attorneys presently advancing Epstein's malicious prosecution of Edwards and his extortionate abuse of process; (c) see 2b above; and (d) See the pleadings, filings and on-the-record statements made in this case and the RRA bankruptcy proceedings.

See Exhibit D, page 3 - 4. Notably, the items to which Edwards refers; to wit: "the pleadings, filings and on-the-record statements made in this case and the RRA bankruptcy proceedings," are all undeniably protected by litigation privilege, barring damages.

Epstein requested in Interrogatory No. 3 of Epstein's Third Set of Interrogatories that Edwards

> [e]xplain in detail how the filing of this action against you interfered with your professional relationships and for each such relationship: (a) identify its nature and the person with whom you have or had the relationship; (b) specify exactly how the relationship has been interfered with; (c) identify each person with knowledge of the interference; and (d) identify actual damages as a result of such interference,

Edwards's response again was evasive, vague and lacking in specificity. Once again, Edwards re-alleged the answer provided to Interrogatory No. 1, and further elaborated:

> Persons with knowledge of the interference include the parties to this action, all present and prior attorneys of record, all persons on the certificate of service of Epstein's Motion to Depose Rothstein filed in the RRA bankruptcy proceedings, all attorneys, judges and observers in Court on every occasion that argument has been presented in support of Epstein's spurious claims against Edwards, all persons exposed to media coverage of Epstein's spurious claims against Edwards. Actual damages sustained by Edwards include: the costs in defending against Epstein's outrageous misconduct; the value of Edwards' diverted time and attention; the value of compensation for the injury to Edwards' professional reputation as liquidated by a jury.

See Exhibit D, page 4 - 5. Thus, Edwards's answer that the jury should decide damages must be interpreted to mean that he is unable to prove any himself.

When asked by Epstein in Interrogatory No. 12 of Epstein's Third Set of

Interrogatories to

> [s]tate, by week or month, the amount of hours that you devoted to your professional work since the filing of this action against you (in 2009, 2010 and 2011) and describe in detail the source of this information (e.g., time sheets, personal diary, manual or computer calendar),

Edwards's response was once again evasive, vague and lacking in specificity. This question was a factually based question, the answer to which should have been derived from a simple computation of hours logged in a work diary. Here again, the non-responsive answer must be interpreted to mean that Edwards is unable to prove, with his own evidence, that he suffered any damages:

> [u]nknown, although Bradley Edwards estimates that in the ordinary course of his work he devotes approximately 60 hours per week to professional activates. This total regularly increases immediately prior to and during trials.

See Exhibit D, page 7.

When asked by Epstein in Interrogatory No. 14 of Epstein's Third Set of Interrogatories to

> [s]tate the amount of gross income that you received from providing services as a lawyer for each of the years 2007, 2008, 2009, 2010 and 2011 and identify the source of that income (including the payor of the same),

Edwards **objected** to the asking of the question:

> [i]rrelevant, immaterial, not reasonably calculated to lead to the discovery of admissible evidence and an unwarranted invasion of Bradley Edwards' right to economic privacy.

See Exhibit D, page 7. Edwards's objection is erroneous since this question goes to the very heart of the damages issue; *i.e.* the question requires Edwards to quantify his damages by demonstrating a loss of income after the commencement of Epstein's litigation against Edwards which, of course, legally mandates the disclosure of same.

The pertinent exception here is that personal financial material is discoverable in cases where "such information is relevant to subject matter of the pending litigation." *Friedman v. Heart Institute of Port St. Lucie, Inc.*, 863 So. 2d 189, 194 (Fla. 2003); *Epstein v. Epstein*, 519 So. 2d 1042, 1043 (Fla. 3d DCA 1998). Edwards is claiming loss of income, and as such, most provide the requested information. The only reasonable interpretation of Edwards's refusal to answer this question is that there are no damages. Furthermore, Edwards cannot hide behind the "shield" of his asserted "right to economic privacy" while using this same issue as a "sword" in this litigation.

Epstein further asked Edwards in Interrogatory No. 15 to Epstein's Third Set of Interrogatories to

> [s]tate the amount of gross income that you received from the provision of goods or services other than while acting as a lawyer for each of the years 2007, 2008, 2009, 2010 and 2011 and identify the source of that income (including the payor of the same),

once again, Edwards's objected to the asking of the question, stating that it was

> [i]rrelevant, immaterial, not reasonably calculated to lead to the discovery of admissible evidence and an unwarranted invasion of Bradley Edwards' right to economic privacy.

See Exhibit D, page 8. For the same reasons as stated above, the reasonable interpretation of Edwards' refusal to answer this question is that he has not suffered any damages as a result of this litigation.

Interrogatory No. 17 to Epstein's Third Set of Interrogatories asked Edwards to identify the professional medical or psychological services," sought for the "claim[ed] damages of emotional distress, embarrassment, and mental anguish as a result of this litigation against you," Edwards responded that he has not sought such services. *See* Exhibit D, page 8. Edwards has no damages in the form of medical bills.

When Epstein, in Interrogatory No. 20 in Epstein's Third Set of Interrogatories, asked Edwards to quantify his

> loss of future earning capacity as a result of the allegedly wrongful conduct, describe with specificity: (a) the duration of the lost future earning capacity; (b) the amount of the lost future earning capacity, and (c) the basis for your calculation,

Edwards' response was "[u]ndetermined at this time." *See* Exhibit D, page 9. Once again, Edwards is not able to prove damages. Moreover, Edwards's responded with the same "undetermined at this time" when asked by Epstein, in Interrogatory No. 21 to Epstein's Third Set of Interrogatories, to "specify and state the amount of money damages you seek to recover" from his claims of "lost business or employment opportunities as a result of the allegedly wrongful conduct of the plaintiff." *See* Exhibit D, page 10.

When in Interrogatory No. 22 of Epstein's Third Set of Interrogatories, Epstein asked Edwards to "describe the method used in calculating your loss of future earnings," Edwards's response was "N/A." *See* Exhibit D, page 10.

When Epstein, in Interrogatory No. 23 to Epstein's Third Set of Interrogatories, asked Edwards to

> state for each [lost business opportunity] the following: (a) the name and address of the employer, client, attorney or entity who offered or presented the business opportunity that you claim was lost; (b) the nature and scope of work involved in the lost business opportunity; (c) the amount of compensation or remuneration you estimated that you would earn or be paid had you undertaken the opportunity and the basis for that estimation; and (d) the date you determined that you had lost the business opportunity,

Edwards once again responded: "N/A." *See* Exhibit D, page 10. Edwards' dismissive and evasive response proves that he has not suffered any damages.

Third, Edwards's allegation that Epstein filed suit "for the sole purpose to

intimidate" him is meritless. As evidenced above, Edwards has, to date, failed to provide *any* evidence of this claim; much less any proffered evidence upon which this Court can rely in evaluating his request to assert a claim for punitive damages. Likewise, Epstein is unable to counter, or refute, any such allegation because no facts in support of this assertion are provided. As such, Edwards cannot claim any damages as a result thereof, mandating denial of his Motion.

Finally, because Edwards cannot meet the threshold for claiming *any* damages in his underlying claims, requisite elements for each of his causes of action, he certainly cannot do so for an award of punitive damages. In Florida, the character of misconduct necessary to sustain an award of punitive damages is the same as that required to sustain a conviction for manslaughter. *Carraway v. Revell*, 116 So. 2d 16, 20 (Fla. 1959). See also *Tiger Point Golf v. Hipple*, 977 So. 2d 608, 610 (Fla. 1st DCA 2007) ("The conduct punitive damages properly condemns and hopefully deters is willful and wanton misconduct of a character no less culpable than what is necessary to convict of criminal manslaughter."). The Florida Supreme Court has likewise explained that the type of evidence necessary to uphold an award of punitive damages "must be of a 'gross and flagrant character, evincing . . . reckless indifference to the rights of others which is equivalent to an intentional violation of them.'" *White Construction Co. v. Dupont*, 455 So. 2d 1026, 1029 (Fla. 1984); *Chrysler Corp v. Wolmer*, 499 So. 2d 823, 824 (Fla. 1986). Before punitive damages "can be recovered, however, the plaintiff must establish actual malice on the part of the defendant." *Bothmann v. Harrington*, 458 So. 2d 1163, 1171 (Fla. 3d DCA 1984). As a result, Edwards will never be able to proffer a basis upon which to assert a claim for any damages, much less punitive damages, and his

Motion should be denied.

CONCLUSION

Based on the arguments presented above and the authorities cited in support thereof, Plaintiff/Counter-Defendant Jeffrey Epstein respectfully requests that this Court enter an Order denying Defendant/Counter-Plaintiff Bradley Edwards's Renewed Motion for Leave to Assert a Claim for Punitive Damages, and grant such other and further relief as deemed necessary and proper.

WE HEREBY CERTIFY that a true and correct copy of the foregoing was served upon all parties listed below, via Electronic Service, this December 5, 2012.

Tonja Haddad Coleman, Esq.
Fla. Bar No.: 0176737
LAW OFFICES OF TONJA HADDAD, PA
315 SE 7th Street
Suite 301
Fort Lauderdale, Florida 33301
[redacted] (facsimile)
[redacted]

Electronic Service List

Jack Scarola, Esq.
Searcy Denney Scarola et al.
2139 Palm Beach Lakes Blvd.
West Palm Beach, FL 33409
[redacted]

Jack Goldberger, Esq.
Atterbury, Goldberger, & Weiss, PA
250 Australian Ave. South
Suite 1400
West Palm Beach, FL 33401
[redacted]

Marc Nurik, Esq.
1 East Broward Blvd.
Suite 700
Fort Lauderdale, FL 33301
[redacted]

Bradley J. Edwards, Esq.
Farmer Jaffe Weissing Edwards Fistos Lehrman
425 N Andrews Avenue
Suite 2
Fort Lauderdale, Florida 33301
[redacted]

Lilly Ann Sanchez, Esq.
LS Law Firm
Four Seasons Tower - 15th Floor
1441 Brickell Avenue
Miami, Florida 33131
[redacted]

Fred Haddad, Esq.
1 Financial Plaza
Suite 2612
Fort Lauderdale, FL 33301
[redacted]