JEFFREY EPSTEIN, Plaintiff, v. SCOTT ROTHSTEIN, individually, BRADLEY J, EDWARDS, Individually, and L.M., individually. Defendants. _____/	IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT IN AND FOR PALM BEACH COUNTY, FLORIDA CASE NO.502009CA040800XXXXMBAG JUDGE: HAFELE

DEFENDANT/COUNTER-PLAINTIFF JEFFREY EPSTEIN'S MOTION FOR SANCTIONS PURSUANT TO VIOLATION OF CONFIDENTIAL SETTLEMENT AGREEMENT AGAINST PLAINTIFF/COUNTER-DEFENDANT BRADLEY J, EDWARDS AND HIS COUNSEL

Plaintiff/Counter-Defendant Jeffrey Epstein ("Epstein"), by and through his undersigned counsel, hereby files this Motion requesting that the Court Sanction Defendant/Counter-Plaintiff Bradley J. Edwards ("Edwards") and his co-counsel in this case, Jack Scarola ("Scarola"), for their flagrant violation of the confidentiality agreements between Epstein and Edwards's clients L.M., E.W., and Jane Doe, as well as enter an Order of entitlement to costs and attorneys' fees in favor of Epstein and against Edwards and Scarola. In support thereof, Epstein states:

INTRODUCTION

As this Court is aware, Edwards represented three clients in civil suits against Epstein; E.W., L.M., and Jane Doe. Each of these parties entered into a Settlement Agreement and General Release ("Agreement") in July 2010. As an express term and condition thereof, each party agreed to confidentiality provisions, to which each party and his or her attorneys were bound. The germane portions of each of the Agreements provides as follows:

> 4. Reciprocal Confidentiality. The Parties agree that **the amount of this settlement shall be kept strictly confidential and shall not be disclosed at any**

time to any third party, except: (a) to the extent required by law or rule; (b) to the extent necessary in connection with medical treatment, legal, financial, accounting or tax services, or appropriate tax reporting purposes (only if necessary); or (c) in response to a validly issued subpoena from a governmental or regulatory agency. Any third party who is advised of the settlement amount must acknowledge that such third party is aware of this confidentiality provision and is bound by it, including the provisions contained in this Settlement Agreement relating to the enforcement of this confidentiality provision. The Parties further agree that the Parties shall not provide any copy, in whole or in part, or in any form, of this Settlement Agreement to any third party, except to the extent required by law or rule or in response to a validly issued subpoena from a governmental or regulatory agency. Moreover, **neither this Settlement Agreement, nor any copy hereof, nor the terms hereof shall be used or disclosed in any court, arbitration, or other legal proceedings, except to enforce the provisions of this Settlement Agreement**. If any of the Parties are served with a valid subpoena, court order, government agency order or subpoena, or other compulsory legal process, pursuant to which disclosure of this Settlement Agreement, the settlement amount, or other terms hereof is requested, or production of the Settlement Agreement is requested, **the Party so served shall give counsel for the other Party notice thereof within five (5) days of such service and, prior to making any such disclosure, shall give counsel to such other Party at least ten (10) days to commence necessary proceedings to obtain a court order preventing, limiting, or otherwise restricting such disclosure**, provided that the Subpoena or order does not require compliance in less than 15 days. Should compliance be less than 15 days, the Party to whom the request is made shall use their best efforts to request additional time for compliance.

5. Enforcement. This Settlement Agreement shall be governed by the laws of the State of Florida. In the event of litigation arising out of a dispute over the interpretation of this Settlement Agreement, the prevailing party shall be entitled to recover its cost of litigation, including attorneys' fees and other reasonable costs of litigation. The Parties (and any third party) agree that the courts of the 15th Judicial Circuit of Palm Beach County shall have exclusive jurisdiction over the subject matter and shall have personal jurisdiction over the Parties (and third parties). In the event of an enforcement matter, the First Parties (and any third party family member) agree that Bradley J. Edwards is authorized to accept service for them, and Robert D. Critton, Jr. is authorized to accept service for Jeffrey Epstein. First and Second Parties **expressly acknowledge and agree that if either First or Second Parties allege that a breach of the confidentiality provision has occurred, the aggrieved First or Second Parties may seek an appropriate remedy with the Court. If the Court finds a breach of the confidentiality provision set forth above, the Court shall determine the amount of the award. Equitable remedies are not relinquished by virtue of this provision; nor does either Party relinquish the right to pursue any other**

legal or equitable damages to which (s)he may be entitled as a result of the other Party's breach, including, but not limited to, prevailing party costs, to include attorneys' fees.

See Agreements, which will be provided to the Court *in camera.*

In this case, Edwards not only disclosed **the amounts for which these cases were settled** in his Opposition to Epstein's Motion for Summary Judgment, *see Opposition Motion filed by Edwards,* pp. 3-4 (Filing Number 61965438), but also attached, as an Exhibit to his own Motion, Edwards's **unverified** answers to Epstein's Interrogatories, in which he again discloses the confidential amounts for which the cases settled; in direct contravention to both the Interrogatories posed to him and the Agreements by which he is bound[1].

Moreover, Scarola provided direct commentary to the press regarding the confidential Agreements (including his usual derogatory and insulting annotations about Epstein and his counsel) and his disclosure of this information in Court papers. *See Palm Beach Daily News Article dated October 3, 2017,* which will be provided to the Court *in camera.* Such commentary is also a violation of the Agreements. *See Agreements.* Consequently, and as demonstrated more fully below, sanctions and attorneys' fees are warranted.

MEMORANDUM OF LAW

It is rudimentary that settlement agreements "are favored as a means to conserve judicial resources [and] Courts will enforce them when it is possible to do so." *Spiegel v. H. Allen Holmes, Inc.*, 834 So. 2d 295, 297 (Fla. 4th DCA 2002) (citing Long Term Mgmt., Inc. v. Univ. Nursing Ctr., Inc., 704 So.2d 669, 673 (Fla. 1st DCA 1997)). Likewise, "[i]t is well settled law

[1] Indeed, the only responses Edwards provided in these unverified Answers to Interrogatories that were not solely objections or assertions of privilege were self-serving responses that were clearly not called for by the interrogatories; to wit: the amounts of settlement received from the Epstein cases and an assertion that Edwards was not a partner at RRA. Moreover, even if this Court can believe that Edwards had any question at all regarding the propriety of disclosing this information, the Agreements provide the procedure he is to follow; which he did not do. *See Agreements.*

that '[a] stipulation properly entered into and relating to a matter upon which it is appropriate to stipulate is binding upon the parties and upon the Court.'" *Hufcor/Gulfstream, Inc. v. Homestead Concrete & Drainage, Inc.*, 831 So. 2d 767, 769 (Fla. 4th DCA 2002) (citing Johnson v. Johnson, 663 So. 2d 663, 664-65 (Fla. 2d DCA 1995)); *Muñoz Hnos., S.A. v. Editorial Televisa Intern., S.A.*, 121 So. 3d 100, 103 (Fla. 3d DCA 2013). Consequently, "where contracts are clear and unambiguous, they should be construed as written, and the court can give them no other meaning." *Gulliver Sch., Inc. v. Snay*, 137 So. 3d 1045, 1047-48 (Fla. 3d DCA. 2014); *Int'l Expositions, Inc. v. City of Miami Beach,* 274 So. 2d 29, 30-31 (Fla. 3d DCA 1973) (when the parties to a settlement agreement bargain for and specify the terms and conditions of their agreement, "it is not the Court's prerogative to substitute [its] judgment for that of the parties in order to relieve one from an alleged hardship of an improvident bargain.").

In this case, Edwards has, with flagrant disregard for both the law and the Agreements, responded to the two Interrogatories below by **objecting** on a series of purported grounds; asserting **privileges;** providing the **improper and impermissible "without waiving said objection;[2]"** and finally, providing as his sole answer, a list of each of his three afore-mentioned plaintiffs with the amounts **Epstein paid to these plaintiffs** to settle each claim:

> 30. **<u>For each payment or distribution made by you and/or your law firm</u>, any entity with which you are affiliated. or pursuant to a joint agreement, regarding the proceeds of settlement paid by Jeffrey Epstein in connection with the settlement of claims of LM, EW, and Jane Doe against Jeffrey Epstein**, state, identify, and describe the amount of payment, the date of payment, the payee, and any promises, contracts, agreements, understandings and arrangements regarding said payment, and all amendments, modifications and supplements of the same, pursuant to which such payment was made**. Include in**

[2] *Christie v. Hixson,* 358 So. 2d 859 (Fla. 4th DCA 1978); *Mann v. Island Resorts Development, Inc.*, 22 FLW Fed. D443, *2, *3 (N.D. Fla. 2009) ("**unverified" answers to interrogatories** failed to describe with specificity documents responsive to interrogatories **in violation of rule**; **responding party not allowed to object to interrogatory but then answer subject to objection**).

your response the aggregate amount of such proceeds of settlement for each of LM, EW, and Jane Doe retained by you and/or your law firm, the amount of such retained proceeds allocated to the reimbursement of expenses, the amount of such retained proceeds retained by your law firm as its share of any contingency fee, and the amount of such retained proceeds allocated to you as distinguished from your law firm (whether or not paid to you) as your share of the fee payable.

31. **State, identify, and describe with particularity any and all trust arrangements, guardian arrangements, custodial arrangements, or similar arrangements, including accounts established by and/or for the benefit of each of LM, EW, and Jane Doe regarding the receipt, administration, and/or payment or distribution of the proceeds of settlement of claims by LM, EW, or Jane Doe against Jeffrey Epstein**. Include in your response a description of the agreements, contracts and instruments, and all amendments, modifications and supplements thereto pursuant to which such arrangements were established, the dates of the same, the names, addresses, email addresses, and telephone numbers of all settlors, grantors, trustees, guardians, custodians, other fiduciaries, and beneficiaries (including, without limitation, contingent beneficiaries) of such arrangements, the names of the account holders, the names of the authorized signatories, the account numbers and the names, addresses, telephone numbers of individual contacts of the financial institutions for all accounts established to receive and hold such proceeds of settlement.

See Exhibit A to Edwards's Opposition Motion. (emphasis added).

First, it is evident from the Interrogatories posed that the information requested was regarding the **disbursement** of the settlement funds once received by Edwards or his firm on behalf of his clients; **nowhere** does the Interrogatory request the amount **paid by Epstein to Edwards's clients**. Indeed, it is incredulous to think that Epstein would request from Edwards the amount he paid to settle these cases; **he is the one who paid them**. Rather, Edwards and Scarola, with brazen disregard for the Agreements, the laws germane to them, and for Epstein's rights thereunder, have breached the Agreements by knowingly disclosing these amounts; and did so for the purpose of making these settlements public to further Edwards's interests in this

litigation and to create more sensationalized headlines about Epstein as trial rapidly approaches; egregious conduct warranting an award of both sanctions and attorneys' fees.

Next, the law is clear that Interrogatory responses are not filed with the court absent certain circumstances. Rule 1.340(e) of the *Florida Rules of Civil Procedure* specifically references Rule 2.425 of the *Florida Rules of Judicial Administration* and Rule 1.280(g) of the *Florida Rules of Civil Procedure*, and requires a party to show that "good cause" exists before filing any Interrogatories in a matter. Such good cause includes seeking better responses to the Interrogatories, or compelling a party to answer them[3]. *Id.* In addition, in line with the now-incorporated Rule 2.425 of the *Florida Rules of Judicial Administration*, the practitioner must ensure that any Interrogatories filed with the court have redacted confidential information before filing the discovery material. Indisputably, the settlement amount of a confidential settlement agreement; one that is specifically not permitted to be disclosed pursuant to said Agreements, would be such information required to be redacted. Edwards and Scarola failed to do so.

Moreover, it is rudimentary that all answers to Interrogatories must be "answered separately and fully, in writing **under oath[,]**" and "signed by the party giving the answers." FLA. R.CIV. P. 1.340(a) (2017). Unverified Interrogatories; ones not submitted under oath, are deemed **unanswered**. Here, Edwards's answers to Interrogatories that he filed with the Court were not signed or answered under oath. Accordingly, these unverified answers to Interrogatories attached to Edwards's Opposition to Epstein's Motion for Summary Judgment are deemed non-answers, as well as hearsay, and **are not even permitted evidence** upon which a party can rely in summary judgment motions or oppositions thereto under Rule 1.510(c) of the *Florida Rules of*

[3] On September 25, 2017, Edwards and Scarola filed four (4) separate Motions to overrule Objections and Compel better Answers to discovery served upon Epstein. Each of these Motions, however, **failed to attach or incorporate a single question or response for which it sought answers or better responses**.

Civil Procedure. The plain language of Rule 1.510 expressly "excludes from consideration on a motion for summary judgment, any document that is not one of the enumerated documents or is not a certified attachment to a proper affidavit." *Bifulco v. State Farm Mut. Auto. Ins.* Co., 693 So. 2d 707, 708 (Fla. 4th DCA 1997) (specifically denying consideration of unverified documents, stating that "[a]t this point in time, they're nothing more than unverified hearsay, which cannot be considered by the Court ..."); *First Union Nat'l Bank of Fla. v. Ruiz*, 785 So. 2d 589, 591 (Fla. 5th DCA 2001) ("[M]erely attaching an unsworn document ... does not . . . satisfy the procedural strictures inherent in Florida Rule of Civil Procedure 1.510(e).").

Scarola and Edwards are veteran trial attorneys, are well aware of these Rules, and are more than familiar with the significance of maintaining the confidentiality of the settlement amounts provided in these Agreements. As such, it is evident that this impermissible gamesmanship was solely to divulge this information and inflame or sway the potential jury pool and this Court; something about which this Court spent considerable time cautioning the parties against at the hearing on October 3, 2017. Consequently, Edwards and Scarola should be sanctioned for both the violation of the Agreements by deliberately disclosing this confidential information and their flagrant disregard for rules of law and procedure. *Moakley v. Smallwood*, 826 So. 2d 221, 226 (Fla. 2002) (it is well-established in Florida that a trial court has the inherent authority to impose sanctions against attorneys for bad faith conduct and violations of rules).

CONCLUSION

In reliance upon the case law cited above, and the plain language of the Agreements entered into between the parties, Epstein respectfully prays that this Court enter an Order awarding damages, sanctions, and the costs and attorney's fees incurred by Epstein in the enforcement of these Agreements; that this information be stricken from the pleadings, removed

from the court file, and redacted anywhere it appears in public record; and for such other and further relief to which the Movant may show himself justly entitled.

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 October 5, 2017.

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