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objection is required to be overruled, and Defendant is entitled to the information sought in the interrogatory.

Interrogatory No. 18

18. List separately the names, addresses and phone numbers of all males, excluding Mr. Epstein, with whom you have had sexual activity since age 10 (by year) up through your current age. Describe the nature of sexual activity, the date(s) and whether you received money or other consideration from the person.

Answer:

Objection. Relevance and overbroad.

Legal Argument Supporting Entitlement to Discovery

Plaintiff's only objection is relevancy and overbroad, without any factual support or showing as required by Rule 26(c) and Local Gen. Rule 26.1 H (S.D. Fla. 2008). Nowhere does C.M.A. explain how such interrogatory is overbroad.

It is well settled that relevant information is discoverable, even if not admissible at trial, so long as the discovery is reasonably calculated to lead to the discovery of admissible evidence. Rule 26(b)(1), Fed.R.Civ.P.; Donahay v. Palm Beach Tours & trans., Inc., 242 F.R.D. 685 (S.D. Fla. 2007). Discoverability of an alleged victim's/plaintiff's sexual conduct or activity in civil cases is governed by Rule 26, Fed.R.Civ.P., pursuant to which the scope of discovery is broad. Donahay, *supra*, at 686, and cases cited therein. "Parties may obtain discovery regarding any matter, not privileged, which is relevant to the claims or defense of any party involved in the pending action." Id.

In accordance with Rule 26, the discovery sought regarding Plaintiff's sexual activity with males and the nature thereof, including whether she received any

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compensation or consideration therefore, in interrogatory no. 18, are all relevant to Plaintiff's damages claims and the type of injury she claims she has suffered. Defendant has no other means of obtaining such information and obtaining such information through Plaintiff will better protect the confidentiality until the Court can make a determination in accordance with the procedures under Rule 412(c) whether such information will be admissible at trial. See Rule 412(c), Fed.R.Civ.P. Defendant will agree to an order keeping the confidentiality of the information obtained through discovery.

The evidence sought is relevant based on the facts and theories of this action. C.M.A.'s First Amended Complaint attempts to allege 32 counts. Counts I through XXX are purportedly brought pursuant to 18 U.S.C. §2255 – *Civil Remedies for Personal Injuries*; Count XXXI is entitled "Sexual Battery," and Count XXXII is entitled "Conspiracy to Commit Tortious Assault only against Defendant, Sarah Kellen."

In her answers to interrogatory nos. 9 and 10, which seek information about C.M.A.'s damages claims, Plaintiff answered that:

I have bi-polar disorder and manic depression. I lost my self-esteem. I began cutting myself on my arms and legs and developed drug problems. Permanent injuries are psychological. (Interrog. No. 9).

I am claiming compensation for mental anguish, mental pain, psychic trauma, and loss of enjoyment of life. These damages will be evaluated by a jury who will provide their own methods of computation in an amount of at least the statutory minimum established by 18 U.S.C.A. §2255. (Interrog. No. 10).

In her 1st Amended Complaint, relevant to her damages claims, Plaintiff alleges:

... C.M.A., has in the past suffered, and will in the future suffer, physical injury, pain and suffering, emotional distress, psychological trauma, mental anguish, humiliation, embarrassment, loss of self-esteem, loss of dignity, invasion of her

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privacy and other damages The then minor Plaintiff incurred medical and psychological expenses . . . and will in the future suffer additional medical and psychological expenses. The Plaintiff C.M.A. has suffered loss of income, a loss of the capacity to earn income in the future, and a loss of capacity to enjoy life. These injuries are permanent in nature and the Plaintiff, C.M.A., will continue to suffer these losses in the future.

(1st Am. Complaint, Counts I – XXX (18 U.S.C. §2255), ¶¶25, 31, 37, 43, 49, 55, 61, 67, 73, 79, 85, 91, 97, 103, 109, 115, 121, 127, 133, 139, 145, 151, 157, 163, 169, 175, 181, 187, 193; Count XXXI (Sexual Battery), ¶199.)

In each of her "Wherefore" clauses, Plaintiff seeks "compensatory damages of at least the minimum provided by law." 18 U.S.C. §2255, pursuant to which Plaintiff attempts to bring certain of her claims, allows for recovery of "actual damages." See fn. 2 herein for applicable statutory text.

C.M.A. also alleges that Defendant's conduct was "sexual assault and child abuse of a then minor." ¶2. She alleges that "beginning in approximately late May or early June of 2002, and continuing until approximately August of 2003, the Defendant coerced and enticed the impressionable, vulnerable, and economically deprived then minor Plaintiff to commit various acts of sexual misconduct." ¶13.

... These acts included, but were not limited to, fondling and inappropriate and illegal sexual touching of the then minor Plaintiff, sexual misconduct and masturbation of the Defendant in the presence of the then minor Plaintiff, soliciting and enticing the then minor Plaintiff to engage in sexual acts with another female in EPSTEIN's presence, and encouraging the then minor Plaintiff to become involved in prostitution; Defendant committed numerous criminal sexual offenses against the then minor Plaintiff including, but not limited to, sexual battery, solicitation or prostitution, procurement of a minor for the purpose of prostitution, and lewd and lascivious assaults upon the person of the then minor plaintiff. (1st Am. Complaint ¶13).

The information sought is clearly relevant to the injuries and damages claimed by Plaintiff. The nature of her claimed injuries and damages are such that Defendant is

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entitled to evidence which would show the nature of her relationship with males, whether she has suffered or engaged in other acts of sexual misconduct or activity as alleged in her complaint, and whether she suffered injury and damages as a result of the other claimed sexual misconduct or activity. See United States v. Bear Stops, 997 F.2d 451 (8th Cir. 1993)(Defendant charged with sexual abuse of six year old boy was entitled to admission of evidence relating to victim's sexual assault by 3 older boys to establish alternative explanation for why victim exhibited behavioral manifestations of sexually abused child.).

In further support of Defendant's motion, a copy of Balas v. Ruzzo, 703 So.2d 1076 (Fla. 5th DCA 1997), rev. denied, 719 So.2d 286 (Fla. 1998), is attached hereto as **Exhibit B** as it is on point to the discovery issues in this action, and the relevancy and discoverability of Plaintiff's history of sexual activity and any payment, therefore. See interrogatories 8, 22 and 30 propounded in the Balas case and footnote 1 herein.³ Additionally and significantly, in other pending state court civil actions against Defendant EPSTEIN attempting to assert similar claims and damages, the Circuit Court Judges have already ruled that such information is discoverable as it is relevant to the damages claims of Plaintiff. See **Composite Exhibits C and D** hereto. **Composite Exhibit C** are the Orders, dated February 23, 2009, entered in the case of A.C. v. Epstein, and Kellen, Case No. 502008CA025129 MB AI, 15th Judicial Circuit, In and For Palm Beach County, State of Florida, which granted Defendant's motion to compel therein directed

³ In Balas v. Ruzzo, supra, the Plaintiffs alleged a multicount complaint including claims for "coercion of prostitution" pursuant to §796.09, Fla. Stat.; for battery for the unwanted and offensive touching of petitioners' bodies; false imprisonment for physically confining the petitioners against their will; invasion of privacy; and intentional infliction of emotional distress.

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to discovery identical to interrogatory no. 18 above. (In the A.C. case, the Plaintiff answered without objection interrogatories identical to nos. 19, 20, and 21 herein.)

Composite Exhibit D is a portion the transcript from a March 3, 2009 hearing on Defendant's motion to compel discovery in the case of Jane Doe II v. Epstein, and Kellen, Case No. 502008CA020614 MB AF, 15th Judicial Circuit Court, In and For Palm Beach County, State of Florida. Again, the Circuit Court Judge determined that the information sought is relevant to the issue of damages and, thus, discoverable.

Accordingly, Plaintiff's objections are required to be overruled and Defendant is entitled to the discovery sought.

Interrogatory No. 23

23. State the names, addresses, ages, phone numbers and dates of all females whom you claim were brought by you to Mr. Epstein's home to give him a massage or for any other reason. As to each female, state the amount of money you claim you were paid to bring each female.

Answer:

A.L. Age: 22
West Palm Beach, FL
I was paid \$100.00

Legal Argument Supporting Entitlement to Discovery

Counsel for the respective parties also discussed this interrogatory in an effort to come to a resolution. Plaintiff does not object to the discovery requested. Plaintiff's counsel indicated that he had a "problem" disclosing the identity of A.L. to the extent she was a minor at the time. Defendant would agree to an order protecting public disclosure of the true identity of A.L. if she were indeed a minor at the time; however, as part of the order, Plaintiff should also be required to provide Defendant with the full

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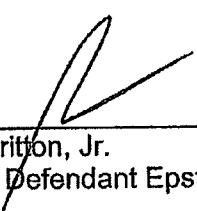
name of A.L. so that Defendant may conduct meaningful discovery. It is Plaintiff who claims she brought A.L. to Epstein's home as part of the alleged "scheme." In addition, Plaintiff failed to provide any date or dates as to when she brought A.L. to Epstein's home. Plaintiff's counsel indicated they would attempt to provide this information.

Accordingly, in granting Defendant's motion to compel discovery, with respect to this interrogatory, Plaintiff should be required to provide the full name of A.L. (which Defendant agrees to keep confidential at this time), the date or dates which she brought A.L. or any female to Epstein's home, and how much she was allegedly paid each time.

WHEREFORE, Defendant requests that this Court grant Defendant's motion to compel and award Defendant's reasonable expenses, including attorney's fees, associated with this motion.

Rule 7.1 Certification

I hereby certify that counsel for the respective parties communicated by telephone in a good faith effort to resolve the discovery issues prior to the filing of this motion to compel. Some of the issues were resolved or in the process of being resolved.



Robert D. Critton, Jr.
Attorney for Defendant Epstein

Certificate of Service

I HEREBY CERTIFY that a true copy of the foregoing was electronically filed with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record identified on the following Service List in the manner specified by CM/ECF on this 24th day of April, 2009

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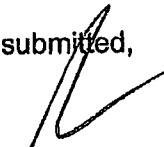
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Plaintiff's Answers to Defendant's First Interrogatories

School behavioral problems, received counseling prior to the incident.

8. Did you consume any alcoholic beverages or take any drugs or medications within 12 hours before the time of each incident(s) described in the complaint? If so, state the type and amount of alcoholic beverages, drugs, or medication which were consumed, and when (dates) and where you consumed them.

ANSWER

1. On one occasion I had taken "Morning Glory" and "Angel Trumpets". I do not recall the date.
2. On another occasion I used cocaine powder. I do not recall the date.
9. Describe each injury (physical, emotional, mental) for which you are claiming damages in this case, specifying the part of your body that was injured, the nature of the injury and as to any injuries you contend are permanent, the effects on you that you claim are permanent.

ANSWER

I have bi-polar disorder and manic depression. I lost my self-esteem. I began cutting myself on my arms and legs and developed drug problems. Permanent injuries are psychological.

10. Please state each item of damage that you claim, and include in your answer: the count to which the item of damages relates; the factual basis for each item of damages; and an explanation of how you computed each item of damages, including any mathematical formula used.

ANSWER

I am claiming compensation for mental anguish, mental pain, psychic trauma, and loss of enjoyment of life. These damages will be evaluated by a jury who will provide their own methods of computation in an amount of at least the statutory minimum established by 18 U.S.C.A. § 2255.

Discovery is ongoing.

11. List the names and business addresses of each physician (including psychiatrist, psychologist, chiropractor or medical provider) who has treated or examined you,

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Plaintiff's Answers to Defendant's First Interrogatories

and each medical facility where you have received any treatment or examination for the injuries for which you seek damages in this case; and state as to each the date of treatment or examination and the injury or condition for which you were examined or treated.

ANSWER

Dr. Serge Thys (Psychiatrist) Date: I do not recall the date. I would defer to the Doctor's records.
2151 45th Street
West Palm Beach, FL. 33407

Susan Pope (Counselor/Therapist) Date: Since high school. Ongoing.
Parent Child Center
2001 W. Blue Heron Boulevard

12. List the names and business addresses of all other physicians, medical facilities, rehab facilities (drug, alcohol or psychiatric) or other health care providers including psychiatrist, psychologist, mental health counselor and chiropractors by whom or at which you have been examined or treated in the past 10 years; and state as to each the dates of examination or treatment and the condition or injury for which you were examined or treated.

ANSWER

Good Samaritan Hospital (3/12/04, 3/25/08)
Child Birth
1309 N Flagler Dr
West Palm Beach, FL 33401

St. Mary's Hospital (4/07)
DNC
901 45th Street
West Palm Beach, FL 33407

Gloria C. Hakkarainen, MD
Ob/Gyn
2925 10th Avenue North, Suite 305
Palm Springs, FL. 33461

Theodore Ritota, DDS
Dentist

Westlaw.

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(Cite as: 703 So.2d 1076)

District Court of Appeal of Florida,
Fifth District.
Kimberly BALAS and Teresa Shumate, Petitioners,
v.
Marjorie A. RUZZO, and Exec., Inc., etc., Re-
spondents.
No. 97-82.

Oct. 10, 1997.

As Modified on Grant of Clarification Jan. 2, 1998.
~~Rev. denied, 719 So.2d 286 (Fla.~~
Plaintiffs brought action against alleged house of prostitution for, inter alia, coercion of prostitution. The Circuit Court, Brevard County, Frank Pound, J., granted in part defendants' motion to compel discovery. Plaintiffs filed petition for writ of certiorari. The District Court of Appeal, W. Sharp, J., held that evidence of plaintiffs' past prostitution and their revenues relating to such activities was discoverable.

Petition denied.

Harris, J., concurred specially and filed opinion.

West Headnotes

[1] Pretrial Procedure 307A ~~31~~

307A Pretrial Procedure

307AII Depositions and Discovery

307AII(A) Discovery in General

307Ak31 k. Relevancy and Materiality.

Most Cited Cases

Discovery in civil cases must be relevant to subject matter of case and must be admissible or reasonably calculated to lead to admissible evidence. West's F.S.A. RCP Rule 1.280(b)(1).

[2] Pretrial Procedure 307A ~~31~~

307A Pretrial Procedure

307AII Depositions and Discovery

307AII(A) Discovery in General

307Ak31 k. Relevancy and Materiality.

Most Cited Cases

Party may be permitted to discover evidence that would be inadmissible at trial, if it would lead to discovery of relevant evidence. West's F.S.A. RCP Rule 1.280(b)(1).

[3] Pretrial Procedure 307A ~~31~~

307A Pretrial Procedure

307AII Depositions and Discovery

307AII(A) Discovery in General

307Ak36 Particular Subjects of Disclosure

307Ak36.1 k. In General. Most Cited Cases

Evidence of plaintiffs' past prostitution and their revenues relating to such activities, including activities with alleged house of prostitution against which they had filed suit, was discoverable, where plaintiffs brought action not only for coercion of prostitution, but also for battery, false imprisonment, invasion of privacy, intentional infliction of emotional distress, violation of their civil rights, and racketeering. Violent Crime Control and Law Enforcement Act of 1994, § 40302, 42 U.S.C.A. § 13981; West's F.S.A. §§ 772.014, 796.09; West's F.S.A. RCP Rule 1.280(b)(1).

*1076 Richard E. Johnson and Heather Fisher Lindsay, of Spriggs & Johnson, Tallahassee, for Petitioners.

Mark S. Peters of Amari, Theriac & Eisenmenger, P.A., Cocoa, for Respondents.

W. SHARP, Judge.

Balas and Shumate petition this court for a writ of certiorari to review certain portions of the lower court's order which granted, in part, a motion to compel discovery filed by respondents Ruzzo and Exec., Inc. Petitioners argue that those portions depart from the essential requirements of law and will cause them irreparable harm because they will be

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compelled to disclose intimate details of their sexual history. We decline to issue the writ of certiorari.

Balas and Shumate filed suit against Ruzzo and Exec, Inc., doing business as "The Boardroom." According to Balas and Shumate, The Boardroom operates ostensibly as *1077 a leisure spa but actually is a house of prostitution. Balas worked at The Boardroom from December 1993 until February 1996; Shumate worked there from October 1992 until March 1996. Ruzzo, the sole officer and shareholder of Exec, Inc., collected about fifty to sixty percent of each employees' earnings from performing sexual acts.

According to Balas and Shumate, Ruzzo exerted mental and emotional control over her employees and thus she was able to exploit them as prostitutes. Ruzzo required her employees to pay her substantial sums of money to attend "metaphysical workshops" conducted by Ruzzo or persons associated with her. At the work place, the employees were required to participate in religious and quasi-religious "circles," rituals and incantations. These practices were allegedly designed to break down the personalities of the women who worked for Ruzzo and to foster dependency and loyalty to herself. At one time when the earnings of a new employee were missing and believed to be stolen, Ruzzo required that the petitioners be strip searched and body cavity searched. Ruzzo caused the petitioners to believe their continued employment was dependent on their submission to these searches and that they might be arrested on felony charges if they refused to submit to the searches.

Balas and Shumate's second amended complaint against Ruzzo contains seven counts. Count I is an action for coercion of prostitution pursuant to section 796.09, Florida Statutes. Petitioners allege the requirement that they perform sexual acts to retain their employment constitutes inducement and coercion to engage in prostitution. Count II is a claim for battery for the unwanted and offensive touching of the petitioners' bodies. Count III is a claim for false imprisonment for physically confining the pe-

titioners against their will. Count IV alleges that respondents' actions constituted an invasion of petitioners' privacy. Count V is a claim for the intentional infliction of emotional distress. Count VI alleges a civil rights action—that respondents have violated petitioners' right to be free from crimes of violence motivated by gender within the meaning of 42 U.S.C. section 13981. Finally, count VII seeks civil remedies for criminal practices or racketeering pursuant to section 772.104, Florida Statutes. The petitioners claim that they suffered emotional pain, anguish, humiliation, insult, indignity, loss of self-esteem, inconvenience, hurt and emotional distress. They seek an award of general and punitive damages, among other relief.

The discovery to which the petitioners are being required to respond is as follows:

I.

Interrogatory 8: Please advise how long have you been engaged in prostitution....

II.

Interrogatory 22: State with specificity the manner in which the acts as described in your Complaint have materially affected how you interact with your husband, boyfriend, fiancée' [sic] or any other individual of the opposite sex.

III.

Request for Production 30: A copy of any photographs, movies or videotapes in which you performed sexual acts and/or simulated sexual acts in exchange for money or other consideration.

IV.

Interrogatory 16: Please list the names, addresses, telephone numbers and rates of pay for all employers for which you worked, including the

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nature of the work, during the five years immediately preceding the date of employment with the Boardroom and from the date of your termination with the Boardroom to the present, providing the names of your immediate supervisors at each place of employment and the reason for your leaving each place of employment.

V.

Interrogatory 26: Please state your total income while employed at the Boardroom, and state the source of that income including any income from other employment or *1078 income earned from prostitution other than at the Boardroom.

VI.

Request for Production 34: Business records from any selfemployment or owned business ventures in the last 5 years, including any records or list of customers, "special customer lists" or "sugar daddy's list."

[1][2] Discovery in civil cases must be relevant to the subject matter of the case and must be admissible or reasonably calculated to lead to admissible evidence. *See Allstate Insurance Co. v. Langston*, 655 So.2d 91 (Fla.1995); *Amente v. Newman*, 653 So.2d 1030 (Fla.1995); *Russell v. Stardust Cruisers, Inc.*, 690 So.2d 743 (Fla. 5th DCA 1997). The concept of relevancy is broader in the discovery context than in the trial context and a party may be permitted to discover evidence that would be inadmissible at trial, if it would lead to the discovery of relevant evidence. *Allstate; Amente*. Florida Rule of Civil Procedure 1.280(b)(1) delineates the proper scope of discovery:

In General. Parties may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter of the pending action, whether it relates to the claim or defense of the party seeking discovery or the claim or defense of any other party, including the existence, description,

nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

Nonetheless, the discovery of certain kinds of information may cause material injury of an irreparable nature. This includes the "cat-out-of-the-bag" material that could be used to injure another person or party outside the context of the litigation, material protected by privilege, trade secrets or work product. Discovery was never intended to be used as a tactical tool to harass, embarrass or annoy one's adversary. Rather, pretrial discovery was implemented to simplify the issues in a case, to eliminate the elements of surprise, to encourage the settlement of cases, to avoid the cost of litigation, and to achieve a balanced search for the truth to ensure a fair trial. *Elkins v. Syken*, 672 So.2d 517 (Fla.1996).

Here the petitioners argue that the information sought to be discovered regarding prostitution and their sexual activities was propounded solely to embarrass them and to invade their right to privacy. The petitioners also claim that this information is privileged under section 796.09 and is not calculated to lead to evidence which would be admissible at trial.

Section 796.09 provides a person with a civil cause of action for compensatory and punitive damages against anyone who coerces that person into prostitution, who coerces that person to remain in prostitution, or who uses coercion to collect or receive any part of that person's earnings derived from prostitution. In the course of litigation under this section, any transaction about which a plaintiff testifies or produces evidence does *not* subject the plaintiff to criminal prosecution or to any penalty or forfeiture. In addition, any testimony or evidence or any information produced by the plaintiff or wit-

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ness for the plaintiffs cannot be used against the plaintiffs or witness in any other investigation or proceeding, except one for perjury.

Section 796.09(5) specifically provides that it is *not* a defense that the plaintiff was paid or otherwise compensated for prostitution, that the plaintiff had engaged in prostitution prior to any involvement with the defendant or that the plaintiff made no attempt to escape from the defendant. Section 796.09(6) provides that convictions for prostitution or prostitution-related offenses are *inadmissible* for the purpose of attacking the plaintiffs' credibility.

This legislation was the result of the Florida Supreme Court Gender Bias Study Commission, which conducted an extensive investigation of prostitution in this state. The Commission's activities included interviews with law enforcement and corrections personnel,*1079 judges, public defenders, prosecutors, drug rehabilitation counselors, social workers, medical personnel, prostitutes, clients and pimps. The Commission found prostitution to be prevalent and uniform throughout the state and law enforcement largely unable to deter it under prevailing social attitudes and judicial practices. The Commission further found that prostitutes are often victims of economic, physical, and psychological coercion, that most persons do not chose to become prostitutes, but do so to survive, and that ninety percent of street prostitutes, both adult and children, are controlled by pimps who use a variety of coercive methods to maintain this control. The Commission determined that clients and pimps are rarely prosecuted and, when prosecuted, receive light sentences; whereas prostitutes, who are mainly females, are frequently prosecuted and receive harsher treatment in the courts. The Commission recommended changes in the methods of intervention in prostitution from punitive to therapeutic, changes in the law to require more equal treatment by the courts of the prostitute in relation to the client and the pimp and to lessen the incentive to traffic in human flesh by giving the prostitute access to the judicial system without first having to be

arrested.

Under section 796.09, the petitioners' prior involvement in prostitution and their earnings from prostitution would be irrelevant. Hence discovery should not be permitted because such information would not be admissible at trial nor would it be reasonably calculated to lead to evidence ultimately admissible at trial. Even though the scope of discovery is generally quite broad, section 796.09 is designed to encourage prostitutes to sue their pimps. Thus the usually broad scope of discovery may be constricted so that prostitutes will not be embarrassed, harassed or hindered in their actions.

[3] Had the petitioners brought their lawsuit against Ruzzo and The Boardroom *only* under section 796.09, evidence of petitioners' past prostitution, including with the Boardroom, and their earnings relating to such activities, may not have been discoverable. However, the petitioners filed a multi-count complaint for compensatory and punitive damages, alleging numerous causes of action against the respondents. These other causes carry no such protection from discovery. Since the information sought by discovery may be relevant or may lead to the discovery of admissible evidence in one or more of these *other* causes of action or to determination of damages, we cannot conclude that the trial court departed from the essential requirements of law in granting this discovery. *See Smith v. TIB Bank of the Keys*, 687 So.2d 895 (Fla. 3d DCA 1997) (by alleging fraud as well as breach of contract, purchaser placed at issue her reliance on venders' assertions, the veracity of financial documents she submitted to the vender, and the state of her mental health, including memory problems she was experiencing at the time of the alleged tortious conduct, thus deposition questions concerning her state of mind were relevant).

Petition for Writ of Certiorari DENIED.

THOMPSON, J., concurs.
HARRIS, J., concurs specially with opinion.
HARRIS, Judge, concurring specially:

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There is a temptation in cases such as this to inquire which, the pot or the kettle, is imbued with the darker hue. Indeed that may ultimately be the question uppermost in the jurors' minds. But the issue presently before us is simply whether the pot, in order to establish the parties' comparative complexion, may discover the historical condition and the inherent characteristics of the kettle.

We are here involved with parties that the limited record before us indicates were co-conspirators in a joint effort to violate Florida's laws against prostitution. The defendants are the owner/operators of a "social club" whose primary service is prostitution; the plaintiffs are employees of the club who provide such services. The employees are suing the owner/operators for, among other counts, taking advantage of their vulnerabilities ("coercing" them to be prostitutes) through manipulation and exploitation. In order to prepare a defense to the action, defendants have filed certain interrogatories for the employees to answer. These interrogatories*1080 request such information as how long the employees have been engaged in prostitution; how the employees have been affected by the defendants' conduct; copies of photographs, movies, and videotapes in which the employees have performed sexual acts or simulated sexual acts; the names of previous employers and previous rates of pay; and a statement of income received from defendants. These interrogatories survived the employees' objections. I agree certiorari should be denied.

The employees' primary cause of action is based on section 796.09(1), Florida Statutes, which provides:

- (1) A person has a cause of action for compensatory and punitive damages against:
 - (a) A person who coerces that person into prostitution;
 - (b) A person who coerces that person to remain in prostitution, or
 - (c) A person who uses coercion to collect or receive

any part of that person's earnings derived from prostitution.

The employees resist discovery of their past prostitution or their past or present earning experience on the basis of subparagraph 5 of section 796.09:

'5) It does not constitute a defense to a complaint under this section that:

- a) The plaintiff was paid or otherwise compensated for acts of prostitution;
- b) The plaintiff engaged in acts of prostitution prior to any involvement with the defendant ...

But the question before us is not whether prior acts of prostitution (or the receipts of earnings therefrom) which might be revealed by answering the interrogatories could be used as a defense to the complaint, but rather whether evidence of such conduct or such earnings would be relevant in determining whether the employees were, in fact, "coerced" into prostitution, into remaining prostitutes, or into sharing the proceeds of their services with defendants. The relevancy of this information depends, of course, on what constitutes coercion.

If we apply the definition of "coercion" which is commonly accepted, then the relevancy of the requested information is apparent and this appeal has no merit at all. Webster defines "coercion" as: (1) to restrain or dominate by force, (2) to compel an act or choice, or (3) to enforce or bring about by force or threat. In sexual battery cases, the legislature has adopted the common meaning of the word "coercion" and has even placed limits on it. It has provided that consent will not be recognized if submission is *coerced* by threats of force or violence *if* the victim reasonably believes the perpetrator or has the present ability to execute the threat.^{FN1} Consent also will not be recognized if submission is *coerced* by a threat of retaliation against the victim or another *if* the victim reasonably believes that the perpetrator has the ability to execute the threat in the future.^{FN2} And in sexual battery cases, the legislature has vitiating what might otherwise be con-

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sidered as consensual if one exploits a known physical or mental weakness of the victim to achieve his or her goal or takes advantage of one who is physically helpless or involuntarily intoxicated.^{FN3} Therefore, even in sexual battery cases, before coercion or exploitation will vitiate consent, the free will of the victim must be overcome by force or threat or some unfortunate circumstance suffered by the victim.

FN1. Section 794.011(4)(b), Florida Statutes.

FN2. Section 794.011(4)(c), Florida Statutes.

FN3. Section 794.011(4)(a),(d),(e), and (f), Florida Statutes.

But then we get to the definition of "coercion" contained in section 796.09(3):

(3) As used in this section, the term "coercion" means any practice of dominion, restraint, or inducement for the purpose of or with the reasonably foreseeable effect of causing another person to engage in or remain in prostitution or to relinquish earnings derived from prostitution, and includes, but is not limited to:

(a) Physical force or threats of physical force.

(b) Physical or mental torture.

(c) Kidnapping.

*1081 (d) Blackmail.

(e) Extortion or claims of indebtedness.

(f) Threats of legal complaint or report of delinquency.

(g) Threat to interfere with parental rights or responsibilities, whether by judicial or administrative action or otherwise.

(h) Promise of legal benefit.

(i) Promise of greater financial rewards;

(j) Promise of marriage;

(k) Restraint of Speech or communications with others.

(l) Exploitation of a condition of developmental disability, cognitive limitation, affective disorder, or substance dependency.

(m) Exploitation of victimization by sexual abuse.

(n) Exploitation of pornographic performance.

(o) Exploitation of human needs for food, shelter, safety, or affection.

The definition urged by the employees herein is the "promise of a greater financial reward." Whether the requested information is relevant to the issue of coercion in this case will depend on what the legislature intended by subsection (I) in the meaning of "coercion."

I agree with Judge Altenbernd's thoughtful analysis in *State v. Brigham*, 694 So.2d 793 (1997):

There can be no dispute that the legislature's unusual definition of "percent" is not a common dictionary definition. This is perhaps an appropriate case in which to remind ourselves of Learned Hand's famous observation that a "mature and developed jurisprudence" does not "make a fortress out of the dictionary."

But even so, one would expect some nexus between the commonly accepted meaning of a word and the definition of that word ascribed by the legislature. If, for example, the legislature defined "canine" as including cats, although one might, jurisprudentially speaking, expect to hear a meow emanate from a Great Dane, the courts should nevertheless closely examine the legislative history to see if that is really what the legislature intended. The court in *Young v. O'Keefe*, 246 Iowa 1182, 69 N.W.2d 534, 537 (1955), stated this principle as follows: "But

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before a definition is construed so as to expand the meaning of a well-known word to include its antonym ..., the intention of the legislature to that effect must be clear." As Judge Campbell observed in *Catron v. Roger Bohn, D.C., P.A.*, 580 So.2d 814, 818 (Fla. 2d DCA 1991):

It is our primary duty to give effect to legislative intent and, if a literal interpretation of a statute leads to unreasonable results, then we should exercise our power to interpret reason and logic to it.

Unfortunately, it is apparent that in enacting this legislation, the legislature has, without redefining the terms for the purposes of this legislation, often used terms with commonly accepted meanings for purposes at great variance from those commonly accepted meanings.

In our case, the legislature did define the term for the purpose of the act. But because the term (coercion) as so defined can be interpreted two ways-one consistent with the commonly accepted meaning and one at variance-we should not accept the "antonym" unless such legislative intent is clear. A free will decision, even if based on a hope of financial gain, is the opposite of a coerced decision.

The employees urge that the mere promise of a greater reward brings them within the act. But if the mere promise of a greater reward is sufficient to establish coercion, then anyone who makes a voluntary and reasoned exercise of free will motivated by the hope of economic gain has been coerced. This definition removes the element of compulsion implicit in the commonly accepted meaning of coercion and substitutes therefor the mere desire for financial gain. The employees herein assert that since they were offered "a greater financial reward" for providing the services performed by them through defendants' establishment, they were coerced into their prostitution activities. This equates the giving

of an opportunity to make a decision with the coercion of that decision. But subsection (I) can also mean *1082 that the promise of a greater reward is coercion *only if* such promised reward is sufficient to overcome one's natural revulsion to selling one's body for money. If there is no such revulsion, there can be no coercion. Becoming a prostitute only because one likes the hours and wages or "because it beats the heck out of working for a living" simply should not meet the test of section 796.09(1).

At oral argument herein, it was suggested without contradiction, that at least one of the employees has a college degree and gave up a well-paying, legitimate job in order to engage in this profession for the greater reward. Section 796.09 does not appear to be a general prostitute's relief act. It is based on a report by the Gender Bias Study Commission which recommended the equalization of treatment in relation to the prostitute, the client and the "pimp." It is based on the premise that prostitutes are generally victims of economic, physical, and psychological coercion and choose prostitution in order to survive. Further, the Commission was concerned that 90 percent of the street prostitutes are controlled by "pimps" who use a variety of coercive methods to maintain control. It seems clear that the legislature was not intending to depart from the precepts of the commonly understood meaning of "coercion" and to redefine it to include both free will decisions and compelled decisions.. The interpretation urged by the employees seems at variance with the stated goal of the legislature and the Gender Bias Commission.

Since there is no cause of action provided for one who makes a reasoned and voluntary exercise of their free will to enter or continue in the profession solely for financial rewards (assuming "coercion" is given the definition more consistent with its commonly accepted meaning and assuming that my interpretation of legislative intent is correct), coercion becomes the critical issue in the trial of such action. The interrogatories propounded by defendants appear relevant to the issue of coercion.

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This is a case of first impression based on a relatively new statute. As indicated, the legislative history of the new law suggests that the statute is designed to assist those who were forced to enter prostitution in order to keep a roof over their heads or food on their table. It does not appear to be intended to aid those who voluntarily enter the profession in order to drive a Mercedes instead of a Ford. The limited record before us indicates that even beginning employees of the defendants (those who do not have an established clientele) bring in \$700 a day and can keep 50% of their earnings. Based on a five-day work week, this would reflect an income of \$87,500 a year even with a two week vacation. And the employees herein are not beginners.

There is no indication that the legislature intended to legalize prostitution or to make it a respectable profession. It merely intended to place the prostitute on the same footing with the client and the "pimp." If a prostitute voluntarily makes the decision to participate, free from force, intimidation, or disadvantageous circumstance, then he or she is on the same footing as the other participants and should be treated the same.

Although it might well serve a legitimate public purpose to permit the cannibalistic demise of such enterprises (and I am not unsympathetic with this view), that does not appear to be the policy behind the current statute. Therefore, in cases where coercion is not present (and this may or may not be one), the court should continue its tradition of not interceding in civil conflicts involving transactions that are either illegal or are against public policy. See *Wechsler v. Novak*, 157 Fla. 703, 26 So.2d 884 (1946); *Thomas v. Ratiner*, 462 So.2d 1157, 1160 (Fla. 3d DCA 1984), *rev. denied*, 472 So.2d 1182 (Fla. 1985) ("An action may lie for interference with an unenforceable contract and even perhaps a voidable contract. No such cause of action lies for interference with a contract *void as against public policy* [another's representation of a client obtained by a doctor/lawyer's illegal personal injury solicitation

in the hospital] and which makes one who is a party thereto, as the appellant in the instant case, guilty of a criminal act for entering into such an agreement.")

We are not asked in this proceeding to rule on the admissibility of the discovered information as evidence at the trial of this cause. We are to determine only if the information might lead to admissible evidence. Even #1083 though we deny the Writ I suggest we certify the following question:

DOES ONE, FREE FROM FORCE, INTIMIDATION, OR DISADVANTAGEOUS CIRCUMSTANCE, WHO MAKES A REASONED DECISION TO BECOME OR REMAIN A PROSTITUTE OR TO SHARE THE PROCEEDS THEREOF BECAUSE OF A PROMISE OF A GREATER FINANCIAL REWARD HAVE A CAUSE OF ACTION UNDER SECTION 796.09(1), FLORIDA STATUTES?

ON MOTIONS FOR REHEARING, FOR CLARIFICATION, FOR CERTIFICATION, AND FOR REHEARING EN BANC

W. SHARP, Judge.

Petitioners Balas and Shumate have filed motions for rehearing, clarification and certification. We deny the motions in full except for one regard. We delete the sentence in the last full paragraph of the opinion which reads: "These other causes of action carry no such protection from discovery."

Motion for Clarification GRANTED as stated above; Motion for Rehearing and Certification DENIED.

HARRIS and THOMPSON, JJ., concur.

Fla.App. 5 Dist., 1997.

Balas v. Ruzzo

703 So.2d 1076, 22 Fla. L. Weekly D2375, 23 Fla. L. Weekly D169

END OF DOCUMENT

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

A.C.,

CASE NO. 502008CA025129XXXXMB AI

Plaintiff,

v.

JEFFREY E. EPSTEIN, and SARAH
KELLEN,

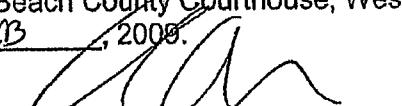
Defendants.

ORDER ON DEFENDANT EPSTEIN'S MOTION TO COMPEL RESPONSES TO
FIRST REQUEST TO PRODUCE TO PLAINTIFF AND TO OVERRULE
PLAINTIFF'S OBJECTIONS, & FOR DEFENDANT'S EXPENSES,
INCLUDING ATTORNEYS' FEES

THIS CAUSE came before the Court on Defendant Epstein's Motion To
Compel Responses To First Request To Produce To Plaintiff And To OVERRULE
Plaintiff's Objections, & For Defendant's Expenses, Including Attorneys' Fees
and the Court having heard argument of counsel and being fully advised in these
premises, it is hereby

ORDERED and ADJUDGED that Defendant's Motion is hereby granted/
denied as to # 17 + #18 , and denied
as to # 22 as phrased . Responses to
be ~~served~~ served w/in 10 day.

DONE AND ORDERED at Palm Beach County Courthouse, West Palm
Beach, Florida, this 23 day of Feb, 2009.


Edward A. Garrison
Circuit Judge

Copies furnished:

ROBERT D. CRITTON, JR., ESQ., and MICHAEL J. PIKE, ESQ., 515 North Flagler Drive, Suite 400, West Palm Beach, FL 33401; JACK SCAROLA, ESQ., AND JACK P. HILL, ESQ., Searcy Denney Scarola Barnhart & Shipley, P.A., 2139 Palm Beach Lakes Blvd., West Palm Beach, FL 33409, and JACK A. GOLDBERGER, ESQ., Alterbury Goldberger & Weiss, P.A., One Clearlake Centre, Suite 1400, 250 Australian Avenue South, West Palm Beach, FL 33401

EXHIBIT C

CC: JEN/603
2/23/09
c-3

Case 9:08-cv-80811-KAM Document 54-4 Entered on FLSD Docket 04/02/2009 Page 2 of 2 35

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

A.C.,

CASE NO. 502008CA025129XXXXMB AI

Plaintiff,

v.

JEFFREY E. EPSTEIN, and SARAH
KELLEN,

Defendants.

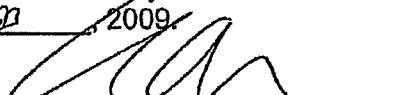
ORDER ON DEFENDANT EPSTEIN'S MOTION TO COMPEL ANSWERS TO
INTERROGATORIES AND TO OVERRULE PLAINTIFF'S OBJECTIONS, & FOR
DEFENDANT'S EXPENSES, INCLUDING ATTORNEYS' FEES

THIS CAUSE came before the Court on Defendant Epstein's Motion To
Compel Answers To Interrogatories And To Overrule Plaintiff's Objections, & For
Defendant's Expenses, Including Attorneys' Fees, and the Court having heard
argument of counsel and being fully advised in these premises, it is hereby

ORDERED and ADJUDGED that Defendant's Motion is hereby granted/

denied as to #5, 12 & 18, denied as
to #2. Response to be served within
10 days.

DONE AND ORDERED at Palm Beach County Courthouse, West Palm
Beach, Florida, this 23 day of Feb 2009.


Edward A. Garrison
Circuit Judge

Copies furnished:

ROBERT D. CRITTON, JR., ESQ., and MICHAEL J. PIKE, ESQ., 515 North Flagler Drive, Suite 400, West Palm Beach, FL 33401; JACK SCAROLA, ESQ., AND JACK P. HILL, ESQ., Searcy Denney Scarola Barnhart & Shipley, P.A., 2139 Palm Beach Lakes Blvd., West Palm Beach, FL 33409, and JACK A. GOLDBERGER, ESQ., Alterbury Goldberger & Weiss, P.A., One Clearlake Centre, Suite 1400, 250 Australian Avenue South, West Palm Beach, FL 33401

*C.C.: TEN 6, DE
C.R. - 1/2/09
C.R. - 1/2/09
C.R. - 1/2/09
C.R. - 1/2/09*

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1

IN THE FIFTEENTH JUDICIAL CIRCUIT COURT
IN AND FOR PALM BEACH COUNTY, FLORIDA
CASE NO. 50 2008CA020614XXXXMB AF

JANE DOE II,

Plaintiff,

vs.

JEFFREY EPSTEIN and SARAH KELLEN,

Defendants.

COPY

COURT REPORTER'S TRANSCRIPT OF
PROCEEDINGS HAD BEFORE
THE HONORABLE DIANA LEWIS

DATE: March 3, 2009

PLACE: Palm Beach County Courthouse
205 N. Dixie Highway
West Palm Beach, Florida 33401

U.S. Legal Support
(561) 835-0220

EXHIBIT D

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2

1
2 APPEARANCES:

3
4 GARCIA LAW FIRM, P.A.
5 224 Datura Avenue
6 Suite 900
7 West Palm Beach, Florida 33401
8 Counsel for Plaintiff
9 BY: ISIDRO M. GARCIA, ESQUIRE

10
11 BURMAN, CRITTON, LUTTIER & COLEMAN
12 515 N. Flagler Drive
13 Suite 400
14 West Palm Beach, Florida 33401
15 Counsel for Defendant
16 BY: ROBERT D. CRITTON, JR., ESQUIRE

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1 that but I'd just like to do that.

2 THE COURT: Right. And if you want to
3 contact the other individuals saying, you know,
4 I'm the one that's questioning whether or not
5 these need to be before one judge. You may have
6 a different perspective than your colleagues who
7 are prosecuting some of the cases.

8 I understand the damages. I'm not
9 saying consolidate. I'm saying transfer. It's
10 not a consolidation issue. Everybody gets that
11 confused for some reason. The words are very
12 different out of my mouth, your mouth and how
13 they're written.

14 So let me go ahead and take a gander at
15 this. I did read it last night. I'm not sure
16 that we need to get -- we need names?

17 MR. CRITTON: Right. Well, here's what some
18 of the issues are is that, as an example -- if I
19 could approach the bench.

20 THE COURT: Sure.

21 MR. CRITTON: This is some of the
22 information that we've obtained through discovery
23 from some of the -- from at least in this
24 instance, it would be this particular Jane Doe.

25 THE COURT: You know who Jane Doe is I take

1 it?

2 MR. CRITTON: Right.

3 THE COURT: You know who the Jane Doe is?

4 MR. CRITTON: Yes, correct. And so this
5 particular lady has kept in part a diary and
6 she -- which appears to have started some time --
7 this is not in any way significant -- but some
8 time after she learned that she could file a
9 lawsuit. I think she's also been to Oakwood
10 Center some time after she learned she could file
11 a lawsuit and seek damages from Mr. Epstein.

12 There's no history of this lady
13 beforehand other than in some of the Oakwood
14 records where she was Baker Acted, she started
15 drinking beer at 16, she started Xanax at 16,
16 started marijuana at 15, that she's sexually
17 active.

18 So how she has interacted -- she has a
19 claim for emotional damages, mental pain and
20 anguish, psychiatric-type damages. How she's
21 interacted with friends, with family, the events
22 in her life, school, work, her interpersonal
23 relationships both with men and let's -- we'll
24 use an example men here, but other individuals.
25 She's saying that this event with Mr. Epstein,

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1 this sexual assault and whatever occurred during
2 these events is that -- has caused her damage.

3 And therefore damages in the case such
4 as the emotional, mental, psychiatric-type
5 damages are completely subjective, I mean
6 separate and apart from any medical bills that
7 may be -- which are clearly intangible. So these
8 are intangible damages. And the jury is
9 instructed, you know, you advise the greater
10 weight of the evidence, what's fair and
11 reasonable under the circumstances.

18 THE COURT: Is this part of a diary for
19 treatment?

20 MR. CRITTON: I have no idea what it is. It
21 was just produced in response to discovery. And
22 she apparently started in, I think this is
23 December of '08. You know I took Jay Lynnenis'
24 girl to the zoo, had an amazing day, I love her,
25 i.e., the girl. We have so much fun. I want a

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1 baby especially with him. Okay. So I know who
2 this person is. We are all so open together, I
3 love him and Jay and Lynn, what do I do with
4 Chris, who is another guy in her life.

14 And this girl, I don't know one way or
15 the other, but let's assume she had a situation
16 where she was assaulted or molested or raped,
17 that all is going to affect her emotional and her
18 mental pain and anguish and it will all factor
19 into evaluating damages.

20 You know, it's not something that I'm
21 going to spread around. I'm happy to keep it,
22 you know, within the confines of the discovery of
23 this case. But if she says every other
24 relationship in my life has been perfect but Jeff
25 Epstein has done this to me and it has affected

1 my ability to trust men and my sexual
2 relationships with other men, which is part of
3 her interpersonal relationships, okay, let's talk
4 to Sam Smith.

5 THE COURT: When does your client allege
6 that she had her first encounter with
7 Mr. Epstein?

8 MR. GARCIA: At what age?

9 THE COURT: Well, what year?

10 MR. CRITTON: June of '03.

11 MR. GARCIA: June of '03, Judge.

12 MR. CRITTON: She claims from June of '03
13 through November of '04.

14 MR. GARCIA: She was I believe 16 at the
15 beginning and ended at 17. She was a minor
16 during all this time.

17 THE COURT: June of '03 to now is six years.

18 Let me hear from Mr. Garcia.

19 MR. GARCIA: Judge, in the criminal case
20 that was filed against Mr. Epstein, he would not
21 have had a right to do this type of discovery and
22 I -- if I could hand up --

23 THE COURT: They wouldn't care about the
24 women.

25 MR. GARCIA: Right. Well, I mean --

1 THE COURT: This is damages. There's no --
2 they weren't seeking damages at the time.

3 MR. GARCIA: Right. And we have not alleged
4 in the complaint or in the answers to
5 interrogatories that her ability to have a
6 relationship with a man has been affected by
7 Mr. Epstein's conduct.

8 We have alleged that she has been
9 hospitalized for depression, anxiety but we have
10 not alleged any damages concerning -- the only
11 reason this would be relevant is if we were
12 making a claim at her ability to have either
13 sexual relations or to have emotional relations
14 with men was effected by her experience with
15 Mr. Epstein.

16 So this damages' claim is just a smoke
17 screen to attempt to get evidence to show the
18 jury that this woman has had other consensual
19 relationships with young men that are
20 approximately her age what I would characterize
21 as a slut defense. She had it coming to her
22 because she engaged in other voluntarily
23 consensual --

24 THE COURT: Mr. Critton wouldn't try the
25 slut defense in my courtroom, I'm sure.

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17

1 MR. GARCIA: Maybe not, but certainly that's
2 the way this discovery is going. And, Judge,
3 what --

4 THE COURT: What are the damages you think
5 your client is seeking?

17 MR. GARCIA: Well, even if it was related to
18 her rejection by three other men -- you mean
19 other men's rejection of her?

20 THE COURT: Yeah. Well, how do you not know
21 that? I mean you can't do it until you do
22 discovery. Has anybody attempted to review the
23 records from Oakwood to find out what's going on?

24 MR. CRITTON: It's like a one-time visit
25 when she was Baker Acted and then there's some

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1 other --

2 THE COURT: She didn't receive treatment?

3 MR. CRITTON: She received treatment for
4 that day and she's been back a couple of times.
5 She's on medication. Again, I don't know what or
6 the extent but she's got -- her medical bills are
7 de minimis.

8 Again as an example, Judge, did the
9 Court have an opportunity to look at the case
10 that I also attached to the motion? Because
11 there's a case that's almost on all fours with
12 this which I attached to our motion which is
13 called Balles versus Russo.

14 THE COURT: Right.

15 MR. CRITTON: It was a case where the
16 plaintiff was sued -- the plaintiff sued the
17 former owners of a house of prostitution. So
18 that part is different, but within it there were
19 a number of claims including a sexual assault
20 claim and they sought emotional pain, humiliation
21 and emotional distress.

22 Within the complaint that was filed in
23 this particular case, she is seeking severe
24 emotional distress, mental anguish, humiliation,
25 embarrassment, past and future, compensatory

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4 THE COURT: How old is she now?

5 MR. GARCIA: She's 21 now.

19 THE COURT: So in other words, she's not
20 only seeking -- she's seeking current emotional
21 damage as a result of this relationship and
22 you're trying to find out if she had prior
23 relationships that perhaps could be intertwined
24 with it so that it's not just Mr. Epstein's --

25 MR. CRITTON: Right. A perfect example is

1 one of the cases that I have is there's a young
2 lady who claims that she was molested in the past
3 and raped, pretty significant issues, well in
4 advance of her even meeting with Mr. Epstein.
5 And they seem to play a large role in her
6 psychiatric and psychological evaluation.

7 We're going to come to the Court in
8 this case as we have others and ask for a
9 psychological evaluation of this lady, and if she
10 was raped or if she was molested or just she had
11 a bad experience or some -- whether it was a
12 young or old man assaulted her in some fashion,
13 that may play a role in her damages and what --

14 THE COURT: What I'm going to allow for
15 discovery purposes only not necessarily getting
16 it in at the time trial are two years before her
17 first encounter with Mr. Epstein and anything
18 subsequent.

19 MR. GARCIA: Judge, I just wanted to say on
20 the record because I forgot to mention it,
21 there's also -- I did state an objection to the
22 identity of people that are unrepresented in this
23 courtroom. They have rights too. So what I --

24 THE COURT: Well, my suggestion is that you
25 send those people a letter and tell them that

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21

1 you're going to disclose them and if they have a
2 problem with it that they come to see me before
3 you disclose it.

4 So I'm going to give you 20 days to
5 respond to this rather than the usual five and
6 that will give you time to put these people on
7 notice and if they want to come visit with me and
8 have a John Doe, I'll have a John Doe hearing
9 but, you know, this is her case. She's doing it.
10 She's the one seeking damages, and he is entitled
11 to be able to confront other individuals to find
12 out information that may be relevant to the
13 damages she's seeking or she can drop the
14 damages. That's her choice. If you seek
15 damages, you've got to do it -- if you could put
16 that in an order so that we have a time for him
17 to do this.

18 Just fill out an order, hand it back up
19 to me and I'll deal with it.

20 (The proceedings were concluded.)
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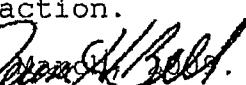
1 REPORTER'S CERTIFICATE
2

3 THE STATE OF FLORIDA,
4 COUNTY OF PALM BEACH.

5 I, Teresa Bell, Court Reporter, certify that
6 I was authorized to and did stenographically report
7 the foregoing proceedings and that the transcript is a
8 true and complete record of my stenographic notes.

9 I further certify that the proceedings were
10 taken at the time and place shown herein and that all
11 counsel and persons as hereinabove shown were present.

12 I further certify that I am not a relative,
13 employee, attorney or counsel of any of the parties,
14 nor am I a relative or employee of any of the parties'
15 attorney or counsel connected with the action, nor am
16 I financially interested in the action.

17 Dated this 11th day of 
18

19

TERESA BELL,
20 Court Reporter
21
22
23
24
25

JANE DOE NO. 6

CASE NO.: 08-CV-80994-MARRA/JOHNSON

Plaintiff,
vs.

JEFFREY EPSTEIN,

Defendant.

JANE DOE NO. 7

CASE NO.: 08-CV-80993-MARRA/JOHNSON

Plaintiff,
vs.

JEFFREY EPSTEIN,

Defendant.

C.M.A.

CASE NO.: 08-CV-80811-MARRA/JOHNSON

Plaintiff,
vs.

JEFFREY EPSTEIN,

Defendant.

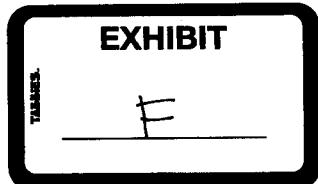
JANE DOE

CASE NO.: 08-CV-80893-MARRA/JOHNSON

Plaintiff,
vs.

JEFFREY EPSTEIN,

Defendant.



DOE II

CASE NO.: 09-CV-80469-MARRA/JOHNSON

Plaintiff,
vs.

JEFFREY EPSTEIN,

Defendant.

/

JANE DOE NO. 101

CASE NO.: 09-CV-80591-MARRA/JOHNSON

Plaintiff,
vs.

JEFFREY EPSTEIN,

Defendant.

/

JANE DOE NO. 102

CASE NO.: 09-CV-80656-MARRA/JOHNSON

Plaintiff,
vs.

JEFFREY EPSTEIN,

Defendant.

/

**PLAINTIFF, C.M.A.'S, MOTION FOR PROTECTIVE ORDER REGARDING
TREATMENT RECORDS FROM PARENT-CHILD CENTER, INC, DR. SERGE THYS,
DOMINIQUE HYPPOLITE/SCHOOL DISTRICT OF PALM BEACH COUNTY, GOOD
SAMARITAN HOSPITAL, ST. MARY'S HOSPITAL, FLORIDA ATLANTIC
UNIVERSITY AND GLORIA C. HAKKARAINEN, M.D. AND INCORPORATED
MEMORANDUM OF LAW**

Plaintiff, C.M.A., by and through her undersigned attorneys, hereby files her Motion For Protective Order Regarding Treatment Records From Parent-Child Center, Inc., Dr. Serge Thys, Dominique Hyppolite/School District of Palm Beach County, Good Samaritan Hospital, St. Mary's Hospital, Florida Atlantic University and Gloria C.

Hakkarainen, M.D. and Incorporated Memorandum of Law, and in support thereof states as follows:

1. This is an action to recover money damages against Defendant, JEFFREY EPSTEIN, for acts of sexual abuse and prostitution committed upon the then-minor, C.M.A.

2. Plaintiff has plead thirty separate counts against EPSTEIN for separate incidences of abuse committed by EPSTEIN against Plaintiff pursuant to 18 U.S.C. §2255. 18 U.S.C. §2255, entitled "Civil remedy for personal injuries", creates a private right of action for minor children who were the victims of certain enumerated sex offenses. 18 U.S.C. §2255 also creates a statutory floor for the amount of damages a victim can recover for a violation of same. Plaintiff has also alleged a single count of Sexual Battery against EPSTEIN.

3. There presently exists between the Plaintiff and EPSTEIN a disagreement as to whether the statutory damage floor established in 18 U.S.C. §2255 is recoverable for each commission of an enumerated sex offenses listed in 18 U.S.C. §2255, or whether the statutory damage floor can only be enforced once, regardless of how many times a defendant perpetrates an enumerated sex offense against a minor victim.

4. This disagreement between the parties is properly the subject of Defendant's *Motion to Dismiss First Amended Complaint For Failure to State a Cause of Action, and Motion For More Definite Statement; Motion to Strike, and Supporting Memorandum of Law* (Attached hereto as Exhibit "A") which is currently pending before this Court.

5. In the event that the Court rules that Plaintiff can recover the statutory damage floor established in 18 U.S.C. §2255 for each proven incident of abuse committed by EPSTEIN upon her, Plaintiff intends to rely exclusively on the statutory damages, rather than those damages which are available at common law. (See Plaintiff, C.M.A.'s Conditional Notice of Intent to Exclusively Rely on Statutory Damages Provided by 18 U.S.C. §2255 attached hereto as Exhibit "B"). If however, the Court rules that the statutory floor applies only one time, regardless of the number of times EPSTEIN committed an enumerated sexual offense against her, Plaintiff will be pursuing all damages available to her at both common law and by statute.

6. Given Plaintiff's intent to rely exclusively on the statutory damages available to her under 18 U.S.C. §2255 as outline above, Plaintiff will not be presenting any evidence of the extent of her physical, emotional, or pecuniary injuries, beyond evidence that she was the victim of sexual contact to which she was legally incapable of consenting by virtue of her age (including, pain and suffering, emotional distress, psychological trauma, mental anguish, humiliation, embarrassment, loss of self-esteem, loss of dignity, invasion of her privacy, and loss of the capacity to enjoy life). Accordingly, any testimony and/or discovery regarding those types of damages would not be relevant to any material issue pending in this case.

7. Presently pending before the Court is Defendant EPSTEIN's Motion to Compel Plaintiff C.M.A. to Respond to Defendant's First Request to Produce and Answer Defendant's First Set of Interrogatories, and to Overrule Objections, and For an Award of Defendant's Reasonable Expenses (Attached hereto as Exhibit "C").

EPSTEIN is seeking from Plaintiff the production of certain treatment records of hers from the Parent-Child Center, Inc., Dr. Serge Thys, a psychiatrist, Dominique Hypolite/School District of Palm Beach County, Good Samaritan Hospital, St. Mary's Hospital, Florida Atlantic University and Gloria C. Hakkarainen, M.D.

8. None of the treatment records from the Parent-Child Center, Inc., Dr. Serge Thys, Dominique Hypolite/School District of Palm Beach County, Good Samaritan Hospital, St. Mary's Hospital, Florida Atlantic University and Gloria C. Hakkarainen, M.D. will have any relevance whatsoever in the event that Plaintiff pursues only those statutory damages available to her under 18 U.S.C. §2255. To the contrary, the production of these confidential and private treatment records would only serve to further humiliate, embarrass, and victimize C.M.A.

9. Furthermore, C.M.A.'s treatment records from the Parent-Child Center, Inc., Dr. Serge Thys, Dominique Hypolite/School District of Palm Beach County, Good Samaritan Hospital, St. Mary's Hospital, Florida Atlantic University and Gloria C. Hakkarainen, M.D. are protected by the psychotherapist-patient privilege pursuant to the Supreme Court's decision in Jaffee v. Redmond, 518 U.S. 1, 116 S.Ct. 1923 (1996) ("All agree that a psychotherapist privilege covers confidential communications made to licensed psychiatrists and psychologists. We have no hesitation in concluding in this case that the federal privilege should also extend to confidential communications made to licensed social workers in the course of psychotherapy.") Ordinarily, a plaintiff does not place her mental condition in controversy merely by requesting damages for mental anguish or "garden variety" emotional distress. In order to place a party's mental

condition in controversy the party must allege a specific mental or psychiatric disorder or intend to offer expert testimony to support their claim of emotional distress. Turner v Imperial Stores, 161 F.R.D. 89 (S.D.Cal. 1995). The evidence sought is also protected under the substantive privacy rights recognized in Florida Statute §§90.503 and 90.5035.

10. Accordingly, Plaintiff respectfully moves for the entry of a protective order pursuant to Fed. R. Civ. Pro. 26(c) regarding Plaintiff's treatment records from the Parent-Child Center, Inc., Dr. Serge Thys, Dominique Hyppolite/School District of Palm Beach County, Good Samaritan Hospital, St. Mary's Hospital, Florida Atlantic University and Gloria C. Hakkarainen, M.D. More particularly, Plaintiff requests the entry of an order precluding the discovery of those records until such time as the Court rules on the issue regarding whether the statutory damage floor as contained in 18 U.S.C. §2255 applies to each proven commission of an enumerated sexual offense by EPSTEIN against CMA. Should the Court rule that 18 U.S.C. §2255 provides a per incident damage floor, the treatment records would have absolutely no relevance whatsoever. In the event that the Court rules that the damage floor applies only once, the parties can then further brief the Court as to whether C.M.A has placed her mental condition "in controversy" such that it operates as a waiver of the psychotherapist-patient privilege.

WHEREFORE, Plaintiff, C.M.A., respectfully requests that this Court enter a protective order preventing the discovery of Plaintiff's treatment records from the Parent-Child Center, Inc., Dr. Serge Thys, Dominique Hyppolite/School District of Palm Beach County, Good Samaritan Hospital, St. Mary's Hospital, Florida Atlantic University

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 08-CIV-80811-MARRA/JOHNSON

C.M. A.,

Plaintiff,

v.

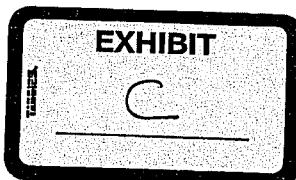
JEFFREY EPSTEIN and SARAH
KELLEN,

Defendants,

**DEFENDANT EPSTEIN'S MOTION TO COMPEL PLAINTIFF C.M.A. TO RESPOND TO
DEFENDANT'S FIRST REQUEST TO PRODUCE AND ANSWER DEFENDANT'S
FIRST SET OF INTERROGATORIES, AND TO OVERRULE OBJECTIONS, AND FOR
AN AWARD OF DEFENDANT'S REASONABLE EXPENSES**

Defendant, JEFFREY EPSTEIN, by and through his undersigned attorneys, moves this Court for an order compelling Plaintiff, C.M.A. to respond to Defendant's First Request To Produce and to answer Defendant's First Set of Interrogatories, and to overrule her objections asserted in Plaintiff's Response To Defendant's First Request To Produce, dated February 13, 2009, and in Plaintiff's Notice of Serving Answers To Interrogatories, dated February 18, 2009. Defendant further seeks an award of his reasonable expenses, including expenses, associated with the making of this motion. Rule 37, Fed.R.Civ.P. (2008); Local Gen. Rules 7.1 and 26.1 H (S.D. Fla. 2008). In support of his motion, Defendant states:

Prior to the filing of this motion, on April 1, 2009, Defendant's counsel communicated by telephone with Plaintiff's counsel in a good faith effort to resolve the discovery issues herein. This motion addresses those discovery items which remain at



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issue. Also, rather than file 2 separate motions to compel, Defendant filed one addressing the production requests and interrogatories because the discovery issues overlap.

Motion To Compel Responses to Production Requests Nos. 1, 2, 4, 5, and 19, and Answers to Interrogatories Nos. 2, 18, and 23.

Production Request No. 1

1. Individual and/or joint income tax returns and supporting documentation including W-2 and 1099 forms for 2002-2007 and, as well as all records or documentation relative to the Plaintiff's earnings for the current year.

Response:

Objection. Irrelevant, immaterial and not reasonably calculated to lead to the discovery of admissible information.

Legal Argument Supporting Entitlement to Discovery

Plaintiff's tax returns and supporting documentation are relevant to Plaintiff's damages claims and, thus, discoverable. Plaintiff's complaint alleges in part that "beginning in approximately late May or early June of 2002, and continuing until approximately August of 2003, the Defendant coerced and enticed the impressionable, vulnerable, and economically deprived then minor Plaintiff to commit various acts of sexual misconduct." 1st Am. Complaint, ¶¶13. (Plaintiff also refused to answer Interrogatory no. 2 which sought her employment history for the past ten years asserting the same general objection).

Such information is both relevant and reasonably calculated to lead to the discovery of admissible evidence. It is well settled that relevant information is discoverable, even if not admissible at trial, so long as the discovery is reasonably calculated to lead to the discovery of admissible evidence. Rule 26(b)(1), Fed.R.Civ.P.;

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Donahay v. Palm Beach Tours & trans., Inc., 242 F.R.D. 685 (S.D. Fla. 2007).

Discoverability of such information is governed by Rule 26, Fed.R.Civ.P., pursuant to which the scope of discovery is broad. Donahay, *supra*, at 686, and cases cited therein. "Parties may obtain discovery regarding any matter, not privileged, which is relevant to the claims or defense of any party involved in the pending action." *Id.*

Plaintiff's tax returns, along with the requested supporting documentation, for the six year period, and documents relevant to her current earnings, are relevant to Plaintiff's damages claims detailed below herein. Such information would show Plaintiff's employment and earning history, as well as provide evidence as to how Plaintiff has been able to function in her daily life before, during and after the alleged incidents. Was she self-sufficient? Was she able to get out of bed each morning and support herself? What type of job did she hold? One's ability to earn a living and be self-supporting has not only a financial component, but also an emotional/psychological/mental component.

C.M.A.'s First Amended Complaint¹ attempts to allege 32 counts. Counts I through XXX are purportedly brought pursuant to 18 U.S.C. §2255 – *Civil Remedies for Personal Injuries*; Count XXXI is entitled "Sexual Battery," and Count XXXII is entitled "Conspiracy to Commit Tortious Assault only against Defendant, Sarah Keller."

In her answers to interrogatory nos. 9 and 10, which seek information about C.M.A.'s damages claims, Plaintiff answered that:

¹ Defendant's Motion To Dismiss directed to Plaintiff's First Amended Complaint is pending.

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I have bi-polar disorder and manic depression. I lost my self-esteem. I began cutting myself on my arms and legs and developed drug problems. Permanent injuries are psychological. (Interrog. No. 9).

I am claiming compensation for mental anguish, mental pain, psychic trauma, and loss of enjoyment of life. These damages will be evaluated by a jury who will provide their own methods of computation in an amount of at least the statutory minimum established by 18 U.S.C.A. §2255. (Interrog. No. 10).

In her 1st Amended Complaint, relevant to her damages claims, Plaintiff alleges:

... C.M.A., has in the past suffered, and will in the future suffer, physical injury, pain and suffering, emotional distress, psychological trauma, mental anguish, humiliation, embarrassment, loss of self-esteem, loss of dignity, invasion of her privacy and other damages The then minor Plaintiff incurred medical and psychological expenses ... and will in the future suffer additional medical and psychological expenses. The Plaintiff C.M.A. has suffered loss of income, a loss of the capacity to earn income in the future, and a loss of capacity to enjoy life. These injuries are permanent in nature and the Plaintiff, C.M.A., will continue to suffer these losses in the future.

(1st Am. Complaint, Counts I – XXX (18 U.S.C. §2255), ¶¶25, 31, 37, 43, 49, 55, 61, 67, 73, 79, 85, 91, 97, 103, 109, 115, 121, 127, 133, 139, 145, 151, 157, 163, 169, 175, 181, 187, 193; Count XXXI (Sexual Battery), ¶199.)

In each of her "Wherefore" clauses, Plaintiff seeks "compensatory damages of at least the minimum provided by law." 18 U.S.C. §2255, pursuant to which Plaintiff attempts to bring certain of her claims, allows for recovery of "actual damages." See fn. 2 herein for applicable statutory text.²

As discussed above, the tax returns, and supporting documentation, will provide direct evidence as to Plaintiff's claimed damages. Such information does not only go to

(a) ² Any minor who is a victim of a violation of section 2241(c), 2242, 2243, 2251, 2251A, 2252, 2252A, 2260, 2421, 2422, or 2423 of this title and who suffers personal injury as a result of such violation may sue in any appropriate United States District Court and shall recover the actual damages such minor sustains and the cost of the suit, including a reasonable attorney's fee. Any minor as described in the preceding sentence shall be deemed to have sustained damages of no less than \$50,000 in value. [Emphasis added.]

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compensatory or actual damages or loss of income/loss of capacity to earn income type

damages, but also her emotional/psychological/mental health type damages. In the telephone communication between counsel for the respective parties, Plaintiff's counsel indicated that Plaintiff was not seeking loss of income/earning capacity type damages; (Defendant is not aware that there has been any formal withdrawal of such damages claimed); notwithstanding, the information sought is still relevant and discoverable based on the additional damages claimed by Plaintiff. The time period will allow Defendant to compare how Plaintiff was doing in her life prior to, during, and after the alleged incident. Again, the type of jobs Plaintiff has been able to hold and her earnings and ability to support herself clearly have not only a financial component, but an emotional/psychological/mental health component as well. Accordingly, Plaintiff's objection is required to be overruled, and Defendant is entitled to the documents requested.

Production Request No. 2

2. All bills/expenses from any medical doctor, chiropractor, psychologists, psychiatrists, mental health counselors (including any members of the healing arts and related fields, i.e. drugs, prescriptions, etc.) you claim you incurred as a result of the injuries which are or may be the subject matter of this lawsuit

Response:

None in our possession. These will be provided upon receipt. Discovery is ongoing.

Legal Argument Supporting Entitlement to Discovery

Plaintiff makes no objection to the documents requested, but has failed to produce any documents responsive to this request. Clearly, the documents are relevant and discoverable as they go to proof of Plaintiff's claimed injuries. In the April 1, 2009,

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telephone communication Plaintiff's counsel indicated that Plaintiff was still not in possession of such documents. The First Request for Production was served on Plaintiff on January 16, 2009. In her answer to interrogatory no. 11, (Notice of Serving Answers, dated February 18, 2009, identifies a psychiatrist and a counselor/therapist from whom she claims she is receiving "treatment or examination for the injuries for which [she] seeks damages." See Exhibit A hereto for copy C.M.A.'s answer to interrogatory no. 11. Regarding the date of treatment from the psychiatrist – she asserts "I would defer to the Doctor's records." She claims the treatment from the counselor/therapist has been "since high school" and "ongoing." Defendant is entitled to the documents sought and Plaintiff is in control of and has the ability to obtain the requested medical bills and expenses she claims were incurred as result of her injuries claimed in this action. Plaintiff should be required to immediately produce the requested documents to Defendant.

Production Request No. 4

4. All reports, evaluations, recommendations and/or analysis submitted by any expert which relate to or cover the incident which is the subject matter of this lawsuit and/or any injuries, damages or losses you allege were caused by the incident.

Response:

Any reports generated by any retained experts not yet disclosed are protected by the work product privilege. Notwithstanding same, none.

Legal Argument Supporting Entitlement to Discovery

Plaintiff, through counsel, in the April 1, 2009, telephone communication, indicated that she does not have any responsive documents and stands by her objection. Rule 26 provides in relevant part –

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2) Disclosure of Expert Testimony.

(A) In General. In addition to the disclosures required by Rule 26(a)(1), a party must disclose to the other parties the identity of any witness it may use at trial to present evidence under Federal Rule of Evidence 702, 703, or 705.

(B) Written Report. Unless otherwise stipulated or ordered by the court, this disclosure must be accompanied by a written report--prepared and signed by the witness--if the witness is one retained or specially employed to provide expert testimony in the case or one whose duties as the party's employee regularly involve giving expert testimony. The report must contain:

- (i) a complete statement of all opinions the witness will express and the basis and reasons for them;
- (ii) the data or other information considered by the witness in forming them;
- (iii) any exhibits that will be used to summarize or support them;
- (iv) the witness's qualifications, including a list of all publications authored in the previous 10 years;
- (v) a list of all other cases in which, during the previous four years, the witness testified as an expert at trial or by deposition; and
- (vi) a statement of the compensation to be paid for the study and testimony in the case.

(C) Time to Disclose Expert Testimony. A party must make these disclosures at the times and in the sequence that the court orders. Absent a stipulation or a court order, the disclosures must be made:

- (i) at least 90 days before the date set for trial or for the case to be ready for trial; or
- (ii) if the evidence is intended solely to contradict or rebut evidence on the same subject matter identified by another party under Rule 26(a)(2)(B), within 30 days after the other party's disclosure.

* * * * *

(e) Supplementing Disclosures and Responses.

(1) In General. A party who has made a disclosure under Rule 26(a)--or who has responded to an interrogatory, request for production, or request for admission--must supplement or correct its disclosure or response:

(A) in a timely manner if the party learns that in some material respect the disclosure or response is incomplete or incorrect, and if the additional or corrective

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Information has not otherwise been made known to the other parties during the discovery process or in writing; or

(B) as ordered by the court.

(2) *Expert Witness.* For an expert whose report must be disclosed under Rule 26(a)(2)(B), the party's duty to supplement extends both to information included in the report and to information given during the expert's deposition. Any additions or changes to this information must be disclosed by the time the party's pretrial disclosures under Rule 26(a)(3) are due.

Accordingly, Defendant requests that should Plaintiff be in possession of any such reports, evaluations, recommendations and/or analysis prepared by an expert expected to testify at trial or deposition, or to be used by an expert expected to testify at trial or deposition, that such documents be produced as required by Rule 26, Fed.R.Civ.P. quoted above.

Production Request No. 5

5. All medical reports and/or records from doctors, physicians, (including psychologists, psychiatrists, mental health counselors), hospitals, drug or alcohol facilities or any other person or entity who has rendered treatment to or examined you for any reason after the incident(s) which is the subject matter of this lawsuit.

Response:

None in our possession. Discovery is ongoing.

Legal Argument Supporting Entitlement to Discovery

Once again, Plaintiff should be required to immediately produce the requested documents. In support of ordering immediate production, Defendant realleges and incorporates his "Legal Argument Supporting Entitlement To Discovery" to request no. 5 above herein.

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Interrogatory No. 2

2. List the names, business addresses, telephone and cell phone numbers, dates of employment, immediate supervisor (name and address) and rates of pay regarding all employers, including self-employment, for whom you have worked in the past 10 years; this includes listing all sources of income you have received. Answer this question by year, i.e. 1998 – 2009.

Answer:

Objection. Irrelevant, immaterial and not reasonably calculated to lead to discovery of admissible evidence.

Legal Argument Supporting Entitlement to Discovery

Such information is clearly relevant to the damages and injuries claimed by Plaintiff in this action. Plaintiff's complaint alleges in part that "beginning in approximately late May or early June of 2002, and continuing until approximately August of 2003, the Defendant coerced and enticed the impressionable, vulnerable, and economically deprived then minor Plaintiff to commit various acts of sexual misconduct." 1st Am. Complaint, ¶13. (See discussion of Production Request no. 1 above herein).

Such information is both relevant and reasonably calculated to lead to the discovery of admissible evidence. It is well settled that relevant information is discoverable, even if not admissible at trial, so long as the discovery is reasonably calculated to lead to the discovery of admissible evidence. Rule 26(b)(1), Fed.R.Civ.P.; Donahay v. Palm Beach Tours & trans., Inc., 242 F.R.D. 685 (S.D. Fla. 2007). Discoverability of such information is governed by Rule 26, Fed.R.Civ.P., pursuant to which the scope of discovery is broad. Donahay, *supra*, at 686, and cases cited therein. "Parties may obtain discovery regarding any matter, not privileged, which is relevant to the claims or defense of any party involved in the pending action." Id.

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Plaintiff's employment and earnings history prior to and after the alleged incidents are relevant to her claimed damages and injuries. Such information would not only evidence Plaintiff's employment and earning history, but also provide evidence as to how Plaintiff has been able to function in her daily life before, during and after the alleged incidents. Was she self-sufficient? Was she able to get out of bed each morning and support herself? What type of job did she hold? One's ability to earn a living and be self-supporting has not only a financial component, but also an emotional/psychological/mental component.

C.M.A.'s First Amended Complaint attempts to allege 32 counts/ Counts I through XXX are purportedly brought pursuant to 18 U.S.C. §2255 – *Civil Remedies for Personal Injuries*; Count XXXI is entitled "Sexual Battery," and Count XXXII is entitled "Conspiracy to Commit Tortious Assault only against Defendant, Sarah Kellen."

In her answers to interrogatory nos. 9 and 10, which seek information about C.M.A.'s damages claims, Plaintiff answered that:

I have bi-polar disorder and manic depression. I lost my self-esteem. I began cutting myself on my arms and legs and developed drug problems. Permanent injuries are psychological. (Interrog. No. 9).

I am claiming compensation for mental anguish, mental pain, psychic trauma, and loss of enjoyment of life. These damages will be evaluated by a jury who will provide their own methods of computation in an amount of at least the statutory minimum established by 18 U.S.C.A. §2255. (Interrog. No. 10).

In her 1st Amended Complaint, relevant to her damages claims, Plaintiff alleges:

... C.M.A., has in the past suffered, and will in the future suffer, physical injury, pain and suffering, emotional distress, psychological trauma, mental anguish, humiliation, embarrassment, loss of self-esteem, loss of dignity, invasion of her privacy and other damages The then minor Plaintiff incurred medical and psychological expenses ... and will in the future suffer additional medical and psychological expenses. The Plaintiff C.M.A. has suffered loss of income, a

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loss of the capacity to earn income in the future, and a loss of capacity to enjoy life. These injuries are permanent in nature and the Plaintiff, C.M.A., will continue to suffer these losses in the future.

(1st Am. Complaint, Counts I – XXX (18 U.S.C. §2255), ¶¶25, 31, 37, 43, 49, 55, 61, 67, 73, 79, 85, 91, 97, 103, 109, 115, 121, 127, 133, 139, 145, 151, 157, 163, 169, 175, 181, 187, 193; Count XXXI (Sexual Battery), ¶199.)

In each of her "Wherfore" clauses, Plaintiff seeks "compensatory damages of at least the minimum provided by law." 18 U.S.C. §2255, pursuant to which Plaintiff attempts to bring certain of her claims, allows for recovery of "actual damages." See fn. 2 herein for applicable statutory text.

As discussed above, C.M.A.'s employment and earnings history will provide direct evidence as to Plaintiff's claimed damages. Such information does not only go to compensatory or actual damages or loss of income/loss of capacity to earn income type damages, but also her emotional/psychological/mental health type damages. In the telephone communication between counsel for the respective parties, Plaintiff's counsel indicated that Plaintiff was not seeking loss of income/earning capacity type damages; (Defendant is not aware that there has been any formal withdrawal of such damages claimed); notwithstanding, the information sought is still relevant and discoverable based on the additional damages claimed by Plaintiff. The time period will allow Defendant to compare how Plaintiff was doing in her life prior to, during, and after the alleged incident. Again, the type of jobs Plaintiff has been able to hold and her earnings and ability to support herself clearly have not only a financial component, but an emotional/psychological/mental health component as well. Accordingly, Plaintiff's