UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 08-CV-80380-MARRA-JOHNSON

JANE DOE NO. 4

Plaintiff,

v.

JEFFREY EPSTEIN,

Defendant.
_____/

DEFENDANT EPSTEIN'S MOTION TO COMPEL PLAINTIFF, JANE DOE NO. 4, TO RESPOND TO DEFENDANT'S FIRST REQUEST TO PRODUCE & TO OVERRULE OBJECTIONS, & 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, JANE DOE No. 4 To respond to specified production requests and to overrule her objections asserted in Plaintiff's Responses To Defendant's First Request To Produce, dated January 26, 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:

Introduction

Prior to the filing of this motion, counsel for Defendant and counsel for Plaintiff corresponded with each other and were able to resolve some of the discovery issues related to Defendant's First Request to Produce and Plaintiff's Response thereto. By letter, dated March 3, 2009, the Plaintiff agreed to withdraw her "General Objections" set forth in her response. As well, issues as to production request no. 14 are presently

resolved. This motion addresses those requests on which the parties were unable to come to an agreement.

Also, Defendant has filed simultaneously with this motion a Motion To Compel directed to certain of Plaintiff's Answers to Defendant's First Set of Interrogatories, also dated January 26, 2009, and which addresses identical discovery issues. Both motions should be determined at the same time.

Motion To Compel Responses to Nos. 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:

Plaintiff has no such documents in her possession. Plaintiff objects to this request as overbroad, unduly burdensome, and not reasonably calculated to lead to discovery of admissible evidence. Without waiving this objection, Plaintiff has no responsive documents.

Legal Argument Supporting Entitlement to Discovery Sought in No. 1

Plaintiff initially claims that she "has no such documents in her possession." Plaintiff does not make a relevancy objection, but instead claims that the request is "not reasonably calculated to lead to the discovery of admissible evidence." Plaintiff also claims that the request is "overbroad" and "unduly burdensome," but fails to make any showing whatsoever how the request is overbroad or unduly burdensome as required under Rule 26(c) and Local Gen. Rule 26.1 H (S.D. Fla. (2008). On its face, the six year time period of 2002-2007 for Plaintiff's tax return's and supporting documentation is reasonable. Plaintiff's Second Amended Complaint alleges that the alleged sexual abuse and exploitation of her by Defendant occurred in "in 2002-2003." 2d Am. Complaint, ¶9.

Although Plaintiff claims to have no such documents in her possession, in her answers to Defendant's First Set of Interrogatories, no. 2, dated January 26, 2009, Plaintiff identifies four places of employment for various time periods beginning in 2004-2005 to the summer of 2008. Attached hereto as **Exhibit D** is Plaintiff's Answer to interrogatory no. 2. Defendant's counsel by faxed letter, dated March 31, 2009, requested that Plaintiff sign and submit two IRS Forms 4506-T requesting tax returns for Each of the years 2002 – 2007. In the event, Plaintiff complies with the request, Defendant will withdraw his motion to compel directed to request no. 1.

Also, 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.

Plaintiff's tax returns, along with the requested supporting documentation, for the six year period 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 incident. 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.

In her Second Amended Complaint, Plaintiff attempts to allege claims in Count I for "Sexual Assault and Battery," Count II for "Intentional Infliction of Emotional Distress," and in Count III for "Coercion and Enticement to Sexual Activity in Violation of 18 U.S.C.A. §2422," and seeks damages pursuant to 18 U.S.C. §2255(a). (Plaintiff alleges diversity of citizenship as a basis for this Court's jurisdiction. 2d Am. Complaint, ¶5). Counts I and II are brought pursuant to state law.

In her complaint, Plaintiff alleges that "she has suffered and will continue to suffer severe and permanent traumatic injuries, including mental, psychological and emotional damages," and "severe mental anguish and pain." She also seeks actual (Count III) and compensatory damages for her alleged injuries. 2d Am. Complaint,¶¶22, 27-28, 34, and "Wherefore" clauses. In her answers to interrogatory no. 9, Plaintiff further states that:

> Plaintiff has suffered severe psychological and emotional injuries, including without limitation, corruption of morals, anxiety, intrusive thoughts, disturbed sleep, impaired concentration, disruption and distortion of normal development, loss of innocence. ... . (Interrog. No. 9).

Plaintiff also alleges that "Haley Robson, a Palm Beach Community College student," was a part of "Epstein's plan and scheme (which) reflected a particular pattern and method" in the alleged recruiting of girl's to come to EPSTEIN's Palm Beach mansion and give him "massages" in exchange for money. 2nd Am. Complaint, ¶11-13. According to the complaint allegations – "Upon information and belief Epstein has a sexual preference and obsession for underage minor girls." ¶9. The "girl would be led up a flight of stairs to a bedroom that contained a massage table ... The girl would be

alone with EPSTEIN; "Epstein would then perform one or more lewd, lascivious and sexual acts, including masturbation and touching the girl's vagina." 2nd Am. Complaint, ¶11, 12. Plaintiff alleges that "in 2002-2003," she, "then approximately 15 years old, fell into Epstein's trap and became one of his victims." ¶9. Plaintiff alleges that she "returned on many occasions to the Palm Beach mansion to provide Epstein with massages." ¶14. Plaintiff further alleges that on these occasions "Epstein engaged in sexual contact and activity with minor Jane, which included, among other things, directing Jane to remove all her clothes, masturbating during the massage, and digitally penetrating Jane's vagina. ... This sexual abuse occurred for approximately three years." ¶14. Plaintiff further alleges that "Epstein committed willful acts of child sexual abuse" on her, which resulted in "mental or sexual injury," and "caused or likely to cause Jane Doe's mental or emotional health to be significantly impaired." 2d Am. Complaint, ¶26.

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 compensatory or actual damages as alleged in the complaint, but also her emotional/psychological/mental health type damages. (Plaintiff did not answer interrogatory no. 10 regarding each item of damage claimed but, in addition to objections, stated that "discovery is ongoing and will be supplemented ...). The time period will allow Defendant to compare how Plaintiff was doing in her life prior to, during, and after the alleged incident. Accordingly, Plaintiff's objection is required to be overruled, and Defendant is entitled to the documents requested.

Production Requests Nos. 10, 11, 17, & 18

10. All photographs, movies, dvds, and videotapes in which you performed sexual acts or simulated sexual acts.

11. All photographs, movies, dvds, and videotapes in which you performed sexual acts or simulated sexual acts in exchange for money or other consideration.

17. All documents reflecting the names and addresses of other individuals with whom you have had sexual activity from January 1, 2000 – December 31, 2005.

18. All documents reflecting the names and addresses of other individuals with whom you have had sexual activity from January 1, 2006 through November 30, 2008.

Plaintiff asserted the identical answer to each of the above stated interrogatories:

Response:

Plaintiff objects to this request as harassing and not reasonably calculated to lead to discovery of admissible evidence. Moreover, this interrogatory [sic] is outrageous, offensive and is apparently posed for the purpose of intimidating the Plaintiff. Any evidence that could conceivably be obtained through this request would not be admissible under Fed.R.Evid. 412. Without waiving this objection, none to Plaintiff's knowledge.

Legal Argument Supporting Entitlement to Discovery Sought in 10, 11, 17, & 18

Plaintiff does not make a relevancy objection, but instead claims that the requests are "not reasonably calculated to lead to the discovery of admissible evidence," claiming that such "evidence ... would not be admissible under Fed.R.Evid. 412." Plaintiff further claims, without making any showing in her answer and without moving for a protective order in accordance with Rule 26(c) and Local Gen. Rule 26.1 H (S.D. Fla. 2008), that the interrogatory is "harassing,' "outrageous, offensive and is apparently posed for the purpose of intimidating Plaintiff." See Defendant's Motion to Compel directed to Plaintiff's Answers to Defendant's First Set of Interrogatories, addressing identical discovery issues. Both Defendant's interrogatories and production

requests seek information regarding Plaintiff's sexual conduct and history; Plaintiff raised the same objections.

In each of her responses, Plaintiff also states that – "Without waiving this objection, none to Plaintiff's knowledge." Plaintiff's response is evasive – either the requested items exist or do not existed. Defendant is entitled to a better response specifically indicating whether the items requested in each of the production requests nos. 10, 11, 17, and 18 – (1) exist or do not exist; (2) are in the possession or control of Plaintiff or some other person that Plaintiff is able to identify; and (3) why Plaintiff qualifies her answer of "none" with the phrase "to Plaintiff's knowledge." (Did such items exist and Plaintiff destroyed or deleted them?)

As to the relevance of the information sought, 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). Contrary to Plaintiff's assertion, Rule 412 does not automatically result in a determination that such sexual history and sexual activity/behavior information is never admissible. In fact, written into the Rule are the procedures to follow in determining when such information is admissible at trial. The Advisory Committee Notes to Rule 412, Fed.R.Evid, makes clear that the procedures to determine admissibility of an alleged victim's/plaintiff's sexual conduct or activity in civil cases does not apply to discovery of such information. Rather, 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.

Rule 412, entitled "Sex Offense Cases; Relevance of Alleged Victim's Past Sexual Behavior or Alleged Sexual Predisposition," provides in relevant part -

> (a) Evidence generally inadmissible.--The following evidence is not admissible in any civil ... proceeding involving alleged sexual misconduct except as provided in subdivisions (b) and (c):
>
> (1) Evidence offered to prove that any alleged victim engaged in other sexual behavior.
>
> (2) Evidence offered to prove any alleged victim's sexual predisposition.
>
> (b) Exceptions.—
>
> * * * * *
>
> (2) In a civil case, evidence offered to prove the sexual behavior or sexual predisposition of any alleged victim is admissible if it is otherwise admissible under these rules and its probative value substantially outweighs the danger of harm to any victim and of unfair prejudice to any party. Evidence of an alleged victim's reputation is admissible only if it has been placed in controversy by the alleged victim.
>
> (c) **Procedure to determine admissibility**.--
>
> (1) A party intending to offer evidence under subdivision (b) must—
>
> (A) file a written motion at least 14 days before trial specifically describing the evidence and stating the purpose for which it is offered unless the court, for good cause requires a different time for filing or permits filing during trial; and
>
> (B) serve the motion on all parties and notify the alleged victim or, when appropriate, the alleged victim's guardian or representative.
>
> (2) Before admitting evidence under this rule the court must conduct a hearing in camera and afford the victim and parties a right to attend and be heard. The motion, related papers, and the record of the hearing must be sealed and remain under seal unless the court orders otherwise.

In confirming that Rule 412 does not control the discoverability of such information, the Advisory Committee Notes (1994 Amendments) state -

> The procedures set forth in subdivision (c) do not apply to discovery of a victim's past sexual conduct or predisposition in civil cases, which will be continued to be governed by Fed. R. Civ. P. 26. In order not to undermine the rationale of Rule 412, however, courts should enter appropriate orders pursuant to Fed. R. Civ. P. 26 (c) to protect the victim against unwarranted inquiries and to ensure confidentiality. Courts should presumptively issue protective orders barring discovery unless **the party seeking discovery makes a showing that the evidence sought to be discovered would be relevant under the facts and theories of the particular case, and cannot be obtained except through discovery.** In an action for sexual harassment, for instance, while some evidence of the alleged victim's sexual behavior and/or predisposition in the workplace may perhaps be relevant, non-work place conduct will usually be irrelevant. *Cf. Burns v. McGregor Electronic Industries, Inc.*, 989 F.2d 959, 962-63 (8th Cir. 1993) (posing for a nude magazine outside work hours is irrelevant to issue of unwelcomeness of sexual advances at work). **Confidentiality orders should be presumptively granted as well.**
>
> (**Emphasis** added).

In accordance with Rule 412 and Rule 26, the discovery sought regarding any photos, movies, dvds, and videotapes as decscribed in requests nos. 10 and 11, and Plaintiff's sexual activity with males, as described in nos. 17 and 18, including whether she received any compensation or consideration therefore, 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) quoted above. Defendant will agree to an order keeping the confidentiality of the information obtained through discovery.

In her Second Amended Complaint, Plaintiff attempts to allege claims in Count I for "Sexual Assault and Battery," Count II for "Intentional Infliction of Emotional Distress," and in Count III for "Coercion and Enticement to Sexual Activity in Violation of 18 U.S.C.A. §2422," and seeks damages pursuant to 18 U.S.C. §2255(a). (Plaintiff

alleges diversity of citizenship as a basis for this Court's jurisdiction. 2d Am. Complaint, ¶5). Counts I and II are brought pursuant to state law.

In her complaint, Plaintiff alleges that "she has suffered and will continue to suffer severe and permanent traumatic injuries, including mental, psychological and emotional damages," and "severe mental anguish and pain." She also seeks actual (Count III) and compensatory damages for her alleged injuries. 2d Am. Complaint,¶¶22, 27-28, 34, and "Wherefore" clauses. In her answers to interrogatory no. 9, Plaintiff further states that:

> Plaintiff has suffered severe psychological and emotional injuries, including without limitation, corruption of morals, anxiety, intrusive thoughts, disturbed sleep, impaired concentration, disruption and distortion of normal development, loss of innocence. ... . (Interrog. No. 9).

Plaintiff also alleges that "Haley Robson, a Palm Beach Community College student," was a part of "Epstein's plan and scheme (which) reflected a particular pattern and method" in the alleged recruiting of girl's to come to EPSTEIN's Palm Beach mansion and give him "massages" in exchange for money. 2nd Am. Complaint, ¶11-13. According to the complaint allegations – "Upon information and belief Epstein has a sexual preference and obsession for underage minor girls." ¶9. The "girl would be led up a flight of stairs to a bedroom that contained a massage table ... The girl would be alone with EPSTEIN; "Epstein would then perform one or more lewd, lascivious and sexual acts, including masturbation and touching the girl's vagina." 2nd Am. Complaint, ¶11, 12. Plaintiff alleges that "in 2002-2003," she, "then approximately 15 years old, fell into Epstein's trap and became one of his victims." ¶9. Plaintiff alleges that she "returned on many occasions to the Palm Beach mansion to provide Epstein with massages." ¶14. Plaintiff further alleges that on these occasions "Epstein engaged in

sexual contact and activity with minor Jane, which included, among other things, directing Jane to remove all her clothes, masturbating during the massage, and digitally penetrating Jane's vagina. ... This sexual abuse occurred for approximately three years." ¶14. Plaintiff further alleges that "Epstein committed willful acts of child sexual abuse" on her, which resulted in "mental or sexual injury," and "caused or likely to cause Jane Doe's mental or emotional health to be significantly impaired." 2d Am. Complaint, ¶26.

The evidence sought is relevant based on the facts and theories of this action.

The items sought are clearly relevant to the injuries and damages claimed by Plaintiff. The nature of her claimed injuries and damages are such that Defendant is entitled to evidence which would show the nature of her relationship with males, whether she has suffered other acts of sexual misconduct, including exploitation and abuse, as alleged in her complaint, whether she suffered injury and damages as a result of the other claimed sexual misconduct with males, and whether she has willingly or not willingly engaged in sexual activity that has been photographed, or filmed by means of movie, dvd or videotapes. 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 A** 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. [1] 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 B and C** hereto. **Composite Exhibit B** 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 to discovery identical to interrogatory no. 18 above, and to requests for production nos. 17 and 18 addressed below herein. (In the A.C. case, the Plaintiff answered without objection interrogatories identical to nos. 19, 20, and 21 herein.) **Composite Exhibit C** 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.

WHEREFORE, Defendant requests that this Court enter an order granting Defendant's motion to compel, overruling Plaintiff's objections, and compelling Plaintiff be to produce the items sought and/or to better respond to the requests as specified

---

[1] 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.

above. Defendant further requests that this Court award his attorney's fees and costs, associated with this motion, in accordance with Rule 37, Fed.R.Civ.P., and applicable Local Rules.

Rule 7.1 Certification

I hereby certify that counsel for the respective parties communicated by letters 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.

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 2nd day of April, 2009:

Stuart S. Mermelstein, Esq.
Adam D. Horowitz, Esq.
Mermelstein & Horowitz, P.A.
18205 Biscayne Boulevard
Suite 2218
Miami, FL 33160
305-931-2200
Fax: 305-931-0877
ssm@sexabuseattorney.com
ahorowitz@sexabuseattorney.com
Counsel for Plaintiff Jane Doe #2

Jack Alan Goldberger
Atterbury Goldberger & Weiss, P.A.
250 Australian Avenue South
Suite 1400
West Palm Beach, FL 33401-5012
561-659-8300
Fax: 561-835-8691
jagesq@bellsouth.net
Co-Counsel for Defendant Jeffrey Epstein

Respectfully submitted,

By: _____
ROBERT D. CRITTON, JR., ESQ.
Florida Bar No. 224162
rcrit@bclclaw.com
MICHAEL J. PIKE, ESQ.
Florida Bar #617296
mpike@bclclaw.com

BURMAN, CRITTON, LUTTIER & COLEMAN
515 N. Flagler Drive, Suite 400
West Palm Beach, FL 33401
561/842-2820 Phone
561/515-3148 Fax
(Co-*Counsel for Defendant Jeffrey Epstein)*