UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

JANE DOE NO.2,

Plaintiff, CASE NO.; 08-CV-80119-MARRA/JOHNSON

vs.

JEFFREY EPSTEIN,

Defendant.
_____/

JANE DOE NO.3, CASE NO.; 08-CV-80232-MARRA/JOHNSON

Plaintiff,

vs.

JEFFREY EPSTEIN,

Defendant.
_____/

JANE DOE NO.4, CASE NO.; 08-CV-80380-MARRA/JOHNSON

Plaintiff,

vs.

JEFFREY EPSTEIN,

Defendant.
_____/

JANE DOE NO. 5, CASE NO.; 08-CV-80381-MARRA/JOHNSON

Plaintiff,

vs.

JEFFREY EPSTEIN,

Defendant.
_____/

JANE DOE NO. 6,

Plaintiff, CASE NO.; 08-CV-80994-MARRA/JOHNSON

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, et al.,

Defendants.
_____/

DOE II,

Plaintiff, CASE NO.; 08-CV-80469-MARRA/JOHNSON

vs.

JEFFREY EPSTEIN, et al,

Defendants.
_____/

JANE DOE NO. 101, CASE NO.; 08-CV-80591-MARRA/JOHNSON

Plaintiff,

vs.

JEFFREY EPSTEIN,

Defendant.
_____/

JANE DOE NO. 102, CASE NO.; 08-CV-80656-MARRA/JOHNSON

Plaintiff,

vs.

JEFFREY EPSTEIN,

Defendant.
_____/

Defendant, Jeffrey Epstein's Reply To Memorandums In Opposition To Epstein's Motion To Compel Answers To First Set Of Interrogatories And First Request To Produce Directed To Jane Doe Numbers 2-7

Defendant, JEFFREY EPSTEIN, (hereinafter "EPSTEIN") by and through his undersigned attorneys, hereby files his Reply to the Memorandums In Opposition To Epstein's Motions To Compel Answers To First Set Of Interrogatories And First Request To Produce (DE 83 and 85 80232-KAM). In support, EPSTEIN states:

I. Epstein's Motion To Compel Should Be Granted Because The Information Sought Goes To The Heart Of Plaintiffs' Claims For Damages

a. Introduction

1. Plaintiffs forget Epstein has due process rights to defend himself in these lawsuits. As set forth in Epstein's Motion to Compel, Plaintiffs allege they suffered and will continue to suffer

severe and permanent traumatic injuries, including mental, psychological and emotional damages, and severe mental anguish and pain and suffering. **See Composite Exhibit "A"**, Interrogatory Response Number 9. Each of the Jane Does seek to recover in excess of one (1) million dollars in damages. The discovery sought goes directly to the heart of Plaintiffs' alleged damage claims.

2. As to the interrogatories, Epstein seeks discovery regarding Plaintiffs sexual activity with males since age 10, including whether she received any compensation or consideration therefore, in interrogatory no. 18, whether she claims other males committed sexual assault or battery on her in no. 19, whether she claims other males committed lewd and lascivious conduct to her in no. 20, and whether other males committed lewd or lascivious exhibition to her in no. 21, which are all relevant to Plaintiffs' damage claims and the type of injuries they claim to have suffered. Significantly, as stated in the Motion to Compel, Plaintiffs did NOT object to relevancy.

3. As to the requests for production numbers 1, 10, 11, 17 and 18, Epstein seeks tax information, and photographs, videos and the like wherein Plaintiffs performed sexual acts or simulated sexual acts as well as documents related to Plaintiffs' sexual histories. See Motion to Compel.

4. Despite the specific wording of the discovery requests, Plaintiffs attempt to dissuade this court from allowing Epstein to discover any information that will directly negate or reduce Plaintiffs' alleged damage claims by citing a host of wholly irrelevant cases that deal specifically with employer liability for workplace sexual harassment claims. Plaintiffs rely on those cases to bolster their misplaced argument that Rule 412 prevents Epstein from obtaining all the discovery sought; however, this court must note that Plaintiffs' argument is intended to apply only to

interrogatory number 18 and requests numbers 17 and 18 (i.e., discovery regarding sexual history, not instances where Plaintiffs have been assaulted, prostituted, or the subject of lewd and lascivious acts). As mentioned below, Plaintiffs' Response consents to discovery involving claims similar to the ones alleged in the complaints. See *infra*.

b. Argument

5. The information sought above is relevant and discoverable even if not admissible at trial. United States v. Bear Stops, 997 F.2d 451 (8th Cir. 1993) deals with "admissibility of other acts of sexual abuse by individuals other than the defendant to explain why a victim of abuse exhibited behavioral manifestations of a sexually abused child." In Bear Stops, the Defendant was entitled to admission of evidence relating to victim's (a six-year old) sexual assault by 3 older boys to establish alternative explanation for why victim exhibited behavioral manifestations of a sexually abused child. United States v. Bear Stops, 997 F.2d at 451. That is exactly what Epstein seeks to obtain in the instant matter. For example, Epstein is entitled to know whether Plaintiffs were molested or the subject of other "sexual activity" or "lewd and lascivious conduct" in order to determine whether there is an alternative basis for the psychological disorders Plaintiffs' claim to have sustained. See *infra*. The discovery requests specifically seek to determine whether Plaintiffs exhibited any of their alleged behavioral manifestations as a result of incidents that occurred prior to those alleged in their complaints. While the information sought is relevant and admissible or may lead to the discovery of admissible evidence, we are not at the "admissibility" stage of these proceedings. We are in the discovery phase. See Composite Exhibit "A".

6. Plaintiffs claim that inquiring of instances from the age of 10 years is unreasonable. Yet, if the Plaintiffs had no sexual experiences (good or bad) until their alleged contact with Epstein, their objections are meaningless in that they could answer "none." On the other hand, Plaintiffs allege they were between the ages of 13-16 at the time of their alleged contacts with Epstein. Therefore, asking questions in interrogatories or at deposition beginning at age 10 is not unreasonable in that obtaining a 10 year history in personal injury matters is standard. All of the Plaintiffs in the Epstein related matters alleged that his actions caused all of their claimed damages. But a 10, or 11 or 12 year old who may have had a sexual experience or some form of sexual activity with another person (minor, young adult, older adult, male, female, guardian, family member) could have a profound impact on them psychologically which may explain their alleged damages (in whole or in part), rather than their alleged contact with Epstein. In fact, Jane Doe 3, in responding to her First Request to Produce, produced a psychiatric evaluation (Exhibit "B") dated October 26, 2007 in which she told a doctor: (a) she was sexually molested at age 13 by her friend's brother; and (b) raped at age 15. Jane Doe 3 did not claim to see Epstein until age 16. In light of the foregoing, can Plaintiffs' counsel legitimately assert to this court that the requested information is not relevant?

7. Next, despite Plaintiffs' strained interpretation and application of the discovery requests in Balas v. Ruzzo, 703 So.2d 1076 (Fla. 5th DCA 1997), rev. denied, 719 So.2d 286 (Fla. 1998), that case is instrumental in that, once again, we are at the "discovery" phase, not the "admissibility" phase of the proceedings. The discovery requests in Balas seek to obtain similar information as those in the instant matter. For example, answers to the interrogatories may yield that Plaintiffs did engage in prostitution or other similar type acts (Interrogatory No. 9 Balas),

how certain acts alleged in the complaint materially affected Plaintiffs' relationships with others or how those acts did not have such an affect on those relationships (Interrogatory No. 22 Balas), and/or whether Plaintiffs suffered from the alleged emotional and psychological disorders as a result of other sexual acts prior to the acts alleged in their respective complaints. The probative value of obtaining full and complete answers to interrogatory numbers 18-21 is outweighed by any danger of harm to the Plaintiff in that the answer goes to the heart of Plaintiffs' damages or lack thereof. United States v. Begay, 937 F.2d 515, 523-24 (10th Cir.1991) (error to prevent defendant from cross-examining child about prior sexual contacts that might have caused the child's physical conditions), *citing*, Fed.R.Evid. 403, 412 and 412(b)(1). Further, Epstein cannot obtain the discovery from any other persons but the Plaintiffs.

8. The cases cited by Plaintiffs to support their argument that Rule 412 prevents the discoverability of Plaintiffs' sexual activities is misplaced. Each of the cases cited by Plaintiff in support of their argument that Rule 412 prevents discovery of Plaintiffs' sexual activities deal specifically with employer liability for workplace sexual harassment claims. See e.g., Barta v. City and County of Honolulu, 169 F.R.D. 132 (D. Haw. 1996)(reasoning in a sexual harassment case, employer was entitled to Plaintiff's sexual history while on-duty but not her entire sexual history off-duty). While those cases are distinguishable from the instant matters on a factual and Title VII basis, if this court accepted Plaintiffs' strained interpretation of Barta, then employers would not be able to ask plaintiffs bringing sexual harassment claims whether they filed similar claims in the past. If this court applies Plaintiffs' interpretation of Barta and its companion cases to the instant matter, then Epstein will be prevented from learning whether the Plaintiffs were

battered, sexually assaulted, or the subject of other lewd and lascivious acts prior to the acts alleged in their complaints. These questions go to the heart of Plaintiffs' damage claims.

9. Next, the discovery requests here seek not only Plaintiffs' sexual history, but also specific instances wherein the Plaintiffs (a) received compensation or consideration for sex acts, (b) claim other males committed sexual assault or battery on them, (c) claim other males committed lewd and lascivious conduct/acts on them, and (d) claim other males committed lewd or lascivious acts on them. On page 6 of Plaintiffs' Response, they each concede that discovery should be had if it ***"involve[s] similar criminal circumstances such as those involving Epstein."*** Here, the majority of the discovery sought centers around similar incidents. See *supra*. As such, it is without question that interrogatory numbers 19-21 must be fully answered, and documents responsive to request for production numbers 10-11 must be supplied.

10. Interrogatory number 18 must be fully answered and documents responsive to request for production numbers 17-18 must be supplied in connection with Plaintiffs' sexual activities from age 10. See *Alberts v. Wickes Lumber Co.*, 1995 WL 117886 at *5(N.D. Ill.)(evidence of victim's sexual relationships after alleged assault were held admissible where effects on such relationships were part of plaintiff's damage claims; to allow plaintiff "to use these alleged experiences as evidence of her damages, but at the same time deny [defendant] the opportunity to prove that these claims are not true, would be to turn the rape 'shield' law into a sword solely for the plaintiff's benefit").

11. In Interrogatory Response Number 9, Plaintiffs place their sexual history at issue given their claims that their relationships have been affected by, among other things, "distrust in men," "sexual intimacy problems," "diminished trust," "social problems," "problems in personal

relationships," "feelings of stress around men," "premature teenage pregnancy," "antisocial behaviors," and "hyper-sexuality and promiscuity." Composite Exhibit "A". Plaintiffs should not be permitted to turn the rape "shield" law into a sword solely for the plaintiffs' benefits. If Plaintiffs choose to base their case for damages on events taking place after and as a result of the alleged Epstein incidents (e.g., intimacy problems), then Rule 412 cannot be deemed to bar Epstein from mounting a defense against such claims by the most direct and traditional of methods, i.e., proof that such claims are simply not true. Id.

Robert D. Critton, Jr.
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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 10 day of May, 2009:

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Respectfully submitted,

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