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December 2, 2019

**ECF**

Hon. Katherine Polk Failla  
Thurgood Marshall  
United States Courthouse  
40 Foley Square  
New York, NY 10007

**Re: *Jane Doe v. Darren K. Indyke and Richard D. Kahn, in their capacities as the Executors of the Estate of Jeffrey E. Epstein, 1:19-cv-08673-KPF***

Dear Judge Failla:

We represent Defendants Darren K. Indyke and Richard D. Kahn, Co-Executors of the Estate of Jeffrey E. Epstein (together, "Defendants"), in the referenced action. We write pursuant to Your Honor's Individual Rule 4(A) to request a conference in anticipation of filing a motion to dismiss Plaintiff's claims for punitive damages pursuant to Fed. R. Civ. P. 12(b)(6) and New York Estates, Powers And Trusts Law § 11-3.2(a)(1). NY EPTL § 11-3.2(a)(1) precludes Plaintiff from recovering punitive damages in this action because she alleges personal injury caused by a decedent tortfeasor.

As a matter of context, Plaintiff alleges decedent Jefferey E. Epstein ("Decedent") sexually abused Plaintiff starting from in or around 2002 when Plaintiff was "approximately" fourteen years old and until she turned seventeen years old. (Compl. ¶¶ 3, 23, 54, 70.) Plaintiff asserts four causes of action based on the personal injuries she allegedly sustained because of that sexual abuse: sexual assault (Count I); sexual battery (Count II); intentional infliction of emotional distress (Count III); and negligent infliction of emotional distress (Count IV).

Punitive damages are not available to Plaintiff. New York Estates, Powers And Trusts Law provides: "No cause of action for injury to person or property is lost because of the death of the person liable for the injury. For any injury, an action may be brought or continued against the personal representative of the decedent, *but punitive damages shall not be awarded nor penalties adjudged in any such action brought to recover damages for personal injury.*" NY EPTL § 11-3.2 (a)(1) (emphasis added). "Also, 'there is a strong policy against the assessment of punitive damages against an estate on account of wrongful conduct of the decedent.'" *Graham v. Henderson*, 224 F.R.D. 59, 63 (N.D.N.Y. 2004) (quoting *Blissett v. Eisensmidt*, 940 F. Supp. 449, 457 (N.D.N.Y. 1996)).

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Plaintiff's Complaint is based entirely on her alleged personal injuries. New York General Construction Law § 37-a defines "personal injury" as including "an assault, battery, false imprisonment, or other actionable injury to the person either of the plaintiff, or of another." All of Plaintiff's causes of action seek damages for personal injury based on Plaintiff's core allegation that she "was sexually assaulted by [Decedent] countless times over the course of three years." (Compl. ¶ 42.) Therefore, under NY EPTL § 11-3.2(a)(1), Plaintiff may not recover punitive damages from Decedent's estate.

Respectfully submitted,

/s/ Bennet J. Moskowitz  
Bennet J. Moskowitz