

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

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

C.M.A.,

Plaintiff,

vs.

JEFFREY EPSTEIN and [REDACTED]
[REDACTED]

Defendants.

**PLAINTIFF, C.M.A.'S, MOTION FOR PROTECTIVE ORDER REGARDING
TREATMENT RECORDS FROM [REDACTED] AND [REDACTED]
[REDACTED] 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 [REDACTED] and [REDACTED] and Incorporated Memorandum of Law, and in support there of 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

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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* (D.E. 47) 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 D.E. 113). 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

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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* (D.E. 54). EPSTEIN is seeking from Plaintiff the production of certain treatment records of hers from the [REDACTED] [REDACTED] and Dr. Serge Thys [REDACTED]

8. Neither the treatment records from the [REDACTED] nor [REDACTED] [REDACTED] 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 [REDACTED] Inc. and [REDACTED] 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

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(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 [REDACTED] and [REDACTED]. 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

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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 [REDACTED], and [REDACTED] until such time as the Court decides whether the statutory damages pursuant to 18 U.S.C. §2255 are available to a victim of an enumerated sexual offense on a per incident basis.

CERTIFICATE OF COMPLIANCE WITH LOCAL RULE 7.1

Counsel for the movant conferred via telephone with counsel for the Defendant and counsel for the Defendant is not in agreement with Plaintiff's Motion For Protective Order Regarding Treatment Records From [REDACTED] and [REDACTED] [REDACTED] and Incorporated Memorandum of Law.

■

s/ Jack P. Hill

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 5th day of June, 2009, I electronically filed the foregoing with the Clerk of the Court by using CM/ECF system, which will send a notice of electronic filing to all counsel of record on the attached service list.

/s/ Jack P. Hill

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vs.

JEFFREY EPSTEIN and SARAH
KELLEN,

Defendants.

_____/

**ORDER ON PLAINTIFF, C.M.A.'S MOTION FOR PROTECTIVE ORDER REGARDING
TREATMENT RECORDS FROM [REDACTED] AND [REDACTED]
[REDACTED] AND INCORPORATED MEMORANDUM OF LAW**

This matter came before the Court upon the Plaintiff's Motion For Protective Order Regarding Treatment Records From [REDACTED] and [REDACTED] [REDACTED] and Incorporated Memorandum of Law. Having considered the motion, it is hereby ORDERED and ADJUDGED that:

Plaintiff's Motion for Protective Order is hereby GRANTED.

DONE AND ORDERED this _____ day of June, 2009.

KENNETH A. MARRA
United States District Judge

Copies to all Counsel of Record