

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

CASE NO. 502008CA037319XXXMB AB

■

Plaintiff,

v.

JEFFREY EPSTEIN,

■■■■ ■■■■,

Defendants.

_____ /

**EPSTEIN'S RESPONSE IN OPPOSITION TO ■■■■ MOTION
FOR LEAVE TO ADD A CLAIM FOR PUNITIVE DAMAGES**

Defendant, Jeffrey Epstein ("Epstein"), submits this Response in Opposition to Plaintiff's, ■■■■ ("■■■■"), Motion for Leave to Amend to Add a Claim Under RICO¹ and Punitive Damages ("Motion"), and states:

1. On December 11, 2009, BB² filed her Motion seeking to add a claim for punitive damages against Epstein. Her Motion and support thereof is completely deficient.

2. Section 768.72(1), Florida Statutes, which governs punitive damages, provides in pertinent part:

In any civil action, no claim for punitive damages shall be permitted **unless there is a reasonable showing by evidence in the record or proffered by the claimant** which would provide a **reasonable basis** for recovery of such damages.

¹ Epstein will address the RICO claim via a Motion to Dismiss.

² Despite ■■■■ attempt to claim anonymity, ■■■■ and her attorneys (not Epstein) identified ■■■■ by name and address in her Exhibit E attached to the Motion

(Emphasis added).

3. To merit an award of punitive damages, a defendant's actions as to **this** Plaintiff must enter the realm of willful and wanton misconduct, which has been defined as conduct of a:

gross and flagrant character, evincing reckless disregard of human life, or of the safety of persons exposed to its dangerous effects, or there is that entire want of care which would raise the presumption of a conscious indifference to consequences, or which shows wantonness or recklessness, or a grossly careless disregard of the safety and welfare of the public, or that reckless indifference to the rights of others which is equivalent to an intentional violation of them.

See White Constr. Co. v. Dupont, 455 So. 2d 1026, 1029 (Fla. 1984).

4. █ proffer and attached exhibits fail to make a reasonable showing or provide a reasonable basis for recovery of punitive damages.

5. █ attaches no affidavit; nor is there a proffer of "what" occurred. █ proffer is extremely vague and non-specific and thus fails to provide a reasonable basis for **her** to recover punitive damages. So what occurred?

6. █ also fails to identify even one question or answer in the over 900 pages of deposition testimony attached to her Motion to support **her** punitive damage claim. In the 900 plus pages of deposition testimony, neither Jeffrey Epstein, █ nor Michael Reiter provides any evidence related to █ or which would support the Motion.

7. The Court must therefore deny █ Motion.

█ Fails to Cite any Specific Evidence or Make a Specific Proffer in Support of Her Claim for Punitive Damages

8. In her Motion, █ makes a broad and generalized proffer that evidence will be presented that "Epstein committed sex acts, and other criminal acts, against Plaintiff while Plaintiff was a minor." See Motion ¶11. However, she fails to specify the sex acts in question, when it allegedly occurred, where it allegedly occurred and how it allegedly occurred.

9. █ also asserts that evidence will be presented that Epstein "sought out underprivileged and economically disadvantaged minor females, including Plaintiff, and preyed upon them to satisfy him sexually." Again, █ fails to proffer any specific evidence, but instead relies on the general statement that Epstein "preyed upon them to satisfy him sexually." Is █ claiming she was underprivileged or economically disadvantaged? If so, such a claim is not supported anywhere in her Motion.

10. The foregoing vague and ambiguous proffers hardly provide a **reasonable** basis for the recovery of punitive damages for █.

11. Next, █ cites and attaches the depositions of Jeffrey Epstein (Exhibit B), █ █ (Exhibit C) and Michael Reiter (Exhibit D) and █ Supplemental Interrogatory Answers (Exhibit E) as support for her punitive damage claim. However, █ fails to identify one question or answer, one page, or one line from over **900 pages** of testimony. Does █ expect the Court (or Epstein) to cull through almost one thousand pages of deposition testimony and guess as to which testimony may support her position?

12. Such a vague reference to Exhibits B – D cannot constitute a “reasonable showing by evidence in the record ... which would provide a reasonable basis for recovery of [punitive] damages.” See Fla. Stat. §768.72. Without identifying the pertinent deposition testimony, it is impossible to determine whether █ can meet her burden under Fla. Stat. §768.72. █ Motion was done “on the cheap;” it is voluminous, but has no substance.

13. Accordingly, Epstein urges the court to disregard █ reliance on Exhibits B – D in determining the instant Motions.

14. In addition, without citing any authority or making any argument, █ concludes she is entitled to an adverse inference based on Epstein's invocation of his Fifth Amendment rights in response to deposition questions. However, reliance on adverse inferences is no substitute for independent evidence needed to make a reasonable showing that █ is entitled to punitive damages. See Avirgan v. Hull, 932 F.2d 1572, 1580 (11th Cir. 1991) (holding that “the negative inference to be drawn from the assertion of the fifth amendment does not substitute for evidence needed to meet the burden of production”); Eagle Hospital Physicians, LLC v. SRG Consulting, Inc., 561 F.3d 1298, 1304 (11th Cir. 2009) (recognizing that “dismissal following the assertion of the Fifth Amendment violates the Constitution where the inferences drawn from Fifth-Amendment-protected silence are treated as a substitute for the need for evidence on an ultimate issue of fact,” citing Avirgan).

15. Nevertheless, █ fails to identify the deposition testimony for which she is requesting an adverse inference, and it is therefore impossible for the Court to properly evaluate the issue.

16. Last, █ Supplemental Interrogatory Answers provide no evidence that she is entitled to punitive damages. Her answers do not even specify what happened in her one visit to Epstein's residence.³ See Exhibit E. █ describes a conversation with a friend (not Epstein) in which she was told before she went that she could make money if she performed a massage in her underwear or naked. She knew and understood what was being requested before she told her friend "yes." █ states she went to Epstein's residence, she describes how she came to be there, but she does not describe what happened once there. How can this provide a reasonable showing that she is entitled to punitive damages when she does not even say what happened?

17. In fact, the deposition testimony cited by █ actually supports Epstein's position that his conduct did not rise to the level of a gross and flagrant character. Attached as **Exhibits A & B**, respectively, are excerpts from the depositions of █ and Michael Reiter.

18. Importantly, █ testified that she did not know, nor had ever heard of, █. See 11/10/09 Deposition of █ at 249. Thus, it is

³ In her Answer to Interrogatory No. 15, █ states "See Complaint." In her Complaint (¶9) and Amended Complaint (¶9), █ alleges that she went to Epstein's residence in 2005. Yet in her Supplemental Answer to Interrogatory No. 15, she states that she went to Epstein's residence in the summer of 2003. Where is she not telling the truth? Nevertheless, allegations alone are insufficient to permit a punitive damage claim. See Espirito Santo Bank v. Rego, 990 So. 2d 1088 (Fla. 3d DCA 2007)

inconceivable what relevance Ms. █ deposition has to █ claim for punitive damages if she has no knowledge of her. In addition, Ms. █ testified that:

- a. Epstein never used physical force or coercion, nor made any threats against her. Id. at 252-53;
- b. She was never afraid or concerned for her safety. Id.;
- c. She told the 12 girls she brought to Epstein's house to lie about their age and say they were 18. None of the girls had any problem lying about their age. Id. at 255;
- d. All of the girls knew what to expect and all went willingly. Id. at 255-56;
- e. No one ever expressed any fear or concern after an encounter with Epstein. Id. at 257;
- f. No one complained that anything inappropriate occurred. Id. at 259;
- g. Jane Doe No. 7 told a friend that she had to see a therapist in Miami at her attorney's request and fake cry, pretend like she was damaged and pretend she had been molested; Jane Doe No. 7 was laughing about it. Id. at 264;
- h. Jane Doe No. 7 never complained that Epstein acted inappropriately or that she suffered any emotional or mental trauma. Id. at 269;
- i. Jane Doe No. 7 told Ms. █ that it would be nice to find an "Epstein" in Orlando, that is, a "guy for income." Id. at 278;
- j. All of the 12 girls she brought over were middle class and not poor. Id. at 285-87; and

k. Jane Doe No. 7 was spoiled (i.e. not poor or disadvantaged). Id. at 302-03.

19. Moreover, former Palm Beach Police Chief, Michael Reiter, testified that:

a. He had no knowledge of █ nor did the Palm Beach Police Department report address any complaint by her. See 11/23/09 Deposition of Michael Reiter at 206.

b. Lanna Belohlavek, state attorney in charge of the sex crimes division, told him these were not prosecutable cases. Id. at 308;

c. The girls who visited Epstein would not be considered victims if they were eighteen and there was no force involved. Id. at 308-10; and

d. Palm Beach Police did not devote resources to prostitution and the state attorney discouraged prostitution-related arrests because the cases were not prosecutable. As a result, most police departments stopped making prostitution-related arrests. Id. at 318-19.

20. In sum, █ made a vague, non-specific proffer, cited almost 1000 pages of deposition testimony without specifying one question or answer which may support her punitive damage claim and attempts to rely on adverse inferences without identifying one question to which Epstein invoked his Fifth Amendment rights.

21. Thus, all that is before the Court relative to punitive damages are █ allegations. Allegations alone are insufficient to support a claim of punitive damages. See Espirito Santo Bank v. Rego, 990 So. 2d 1088, 1090 (Fla. 3d DCA 2007). In Rego, the trial court permitted the plaintiff to amend his complaint to add a claim of punitive

damages because the court **incorrectly** believed it was required to permit such amendment in every case involving fraud.⁴ *Id.* at 1089. The trial court stated:

In my opinion the conduct for which punitive damages is allowable is supposed to be gross negligence or intentional misconduct. **I do not find, even taking all the evidence in the light most favorable to the plaintiff, that it rises to that level in this case. So but for the Perlman [v. Prudential, 686 So. 2d 1378 (Fla. 3d DCA 1997)] decision I wouldn't be allowing the amendment at all, based on the facts, even if they were undisputed** ... I'm only allowing it in a fraud count and I'm only allowing it because the Third District says that I must.

Id. (Emphasis in original).

22. In reversing the trial court, the Third District Court of Appeal noted that "the trial court's error was in reading Perlman expansively to allow a punitive damages claim in each instance when fraud is **alleged**, instead of only when a reasonable evidentiary basis has been submitted in support of the fraud claim." *Id.* at 1090 (Emphasis in original). The court held the plaintiff's allegations of fraud, without evidentiary support, were insufficient to entitle him to amend his complaint to add a claim for punitive damages. The trial court's allowance of the punitive damages amendment "in spite of its finding of insufficient evidence [] constitute[d] a departure from the essential requirements of the law." *Id.* See also Cypress Aviation, Inc. v. Bollea, 826 So. 2d 1091, 1092 (Fla. 2d DCA 2002) (holding that "Florida law is clear" that a plaintiff must provide the court with an evidentiary basis before the court may

⁴ █ makes the same **incorrect** suggestion in her Motion: "[i]t is well settled that jury may award punitive damages where there is an intentional tort involving sexual assault/battery." See Motion ¶18. Although a punitive damages amendment and jury award are two separate issues (the latter having no bearing on the former), any suggestion that a punitive damage amendment is somehow "automatic" in cases where an intentional tort is alleged is **false** and belied by the case law.

allow an amendment to add a punitive damage claim; even though the pleadings alleged fraud, the plaintiff failed to provide any evidentiary basis in support and therefore the punitive damage claim should not have been permitted).

23. As demonstrated herein, █ fails to provide any evidentiary basis to support her punitive damages claim and thus fails to meet the requirements of Fla. Stat. §768.72; that is, a reasonable showing by evidence or proffer which provides a reasonable basis for the recovery of punitive damages (i.e. evidence of conduct of a gross and flagrant character).

24. Estate of Despain v. Avante Group, Inc., 900 So. 2d 637, 642 (Fla. 5th DCA 2005) illustrates the requisite showing to support amendment to add a punitive damage claim. In Estate of Despain, the court referred to the "affidavits of witnesses" and considered "the proffered facts and the record evidence" in determining whether there was a reasonable basis to support recovery of punitive damages. Id. at 639. Indeed, the court made a lengthy summary of the record evidence and proffered facts before concluding that such supported a claim for punitive damages. Id. at 644.

25. And while the court in Estate of Despain held that a party may proffer evidence to support its claim of punitive damages, no where did the court suggest a vague and general recitation of allegations can provide a reasonable basis to support a punitive damage claim. If such were the law, a plaintiff would be able to commence an action one day and file a motion to amend to add punitive damage claims the next day by parroting the allegations of the complaint and calling them a proffer. Such an application of the rule would contravene the spirit of Fla. Stat. § 768.72, which requires

a reasonable showing that provides a reasonable basis for recovery of punitive damages.

26. Accordingly, this Court must deny █ Motion

WHEREFORE, Defendant, JEFFREY EPSTEIN, respectfully requests the Court deny █ Motion to amend her complaint to add a claim for punitive damages and grant any additional relief the Court deems just and proper.

Certificate of Service

I HEREBY CERTIFY that a true copy of the foregoing was sent by fax and U.S.

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