UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
FORT LAUDERDALE DIVISION
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IN RE: CASE NO. 09-34791-RBR

ROTHSTEIN ROSENFELDT ADLER, [redacted]., CHAPTER 11

Debtor.
_____/

JEFFREY EPSTEIN'S REPLY TO THE INTERVENORS' RESPONSE TO EPSTEIN'S MOTION TO TAKE THE INTERVENORS' DEPOSITIONS AND TO COMPEL THEIR MENTAL EXAMINATIONS

Jeffrey Epstein ("Epstein") replies to the Intervenors, [redacted]., [redacted] and Jane Doe's Response (D.E. 6446) to Epstein's Motion to Take the Intervenors' Depositions and to Compel their Mental Examinations (Epstein's "Motion") (D.E. 6440), and states:

INTRODUCTION

Inexplicably, the Intervenors' counsel insists on making the Intervenors relive (and attempt to re-litigate) their settled sexual abuse claims against Jeffrey Epstein. Although the Intervenors' counsel vitriolically claims that Epstein is traumatizing the Intervenors by seeking reasonable discovery in defense of their "significant emotional distress" claim, the reality is that the Intervenors' counsel is inventing their "significant emotional distress" claim and perpetuating the "victims" label and "sexual abuse" mantra.[1] To be clear, these proceedings are not about the alleged sexual abuse claims settled in 2010 – eight years ago. Indeed, *each of the Intervenors' claims for damages arising out of alleged sexual abuse were resolved in July 2010, and each of the Intervenors executed a full release in favor of Epstein.* Any attempt to relitigate the settled

[1]In the Response, the Intervenors' counsel uses the improper label "victims" 51 times to describe the Intervenors and "sexual abuse" or "sexual assault" 10 times.

claims or attempt to evoke "me-too" sympathy (or media attention) for the Intervenors is immaterial to the narrow issue now before the Court. Those issues were long ago settled.

Rather, the narrow issue before this Court is whether Epstein or his former law firm (Fowler White) should be held in contempt and required to pay damages for allegedly violating this Court's November 2010 Agreed Order relating to documents on a disc, not sexual abuse claims. Simply, the Intervenors seek money damages for *significant* emotional distress because a disc sat in a box in Fowler White's files for eight years. Because the Intervenors appear to have failed to present this Court with requisite proof of their damages, this Court can either deny their claims or allow Epstein the requested discovery to defend himself at the upcoming show cause hearing.

Furthermore, it is blatantly inaccurate to suggest that Epstein is attempting to harass the Intervenors by his reasonable request to obtain discovery in defense of a claim for "significant emotional distress" damages. To the contrary, Epstein has established that the Intervenors—admittedly through their counsel thus far—have placed their respective mental states in controversy by seeking damages for significant emotional distress as set forth in their Summary of Damages. (D.E. 6432.)

The Intervenors also mistakenly and repeatedly refer to the documents on the disc as "confidential materials." The disc contains more than 27,000 pages of e-mails, thousands of which have been produced to Epstein and only 47 e-mails which Epstein identified as trial exhibits that Edwards claim are privileged. Indisputably, no court has deemed the documents on the disc or the 47 e-mails to be attorney-client privileged, or even addressed to or from the Intervenors. Rather, that very issue has been extensively briefed in the State Court Action and Epstein has argued that the 47 e-mails are not privileged, any work-product protection has been waived or applicable

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exceptions require disclosure to the state court jury in December. The Honorable Donald J. Hafele in the State Court Action will make those determinations.

Finally, it is illogical and absurd for the Intervenors to premise their claim of "significant emotional distress" on how Epstein will testify at his upcoming deposition. The Intervenors are either damaged or not; they do not need Epstein's deposition to quantify or enhance their description of *significant* emotional distress damages.

Epstein reincorporates the arguments set forth in his Motion (D.E. 6440) and requests that his Motion be granted.

ARGUMENT

A. The Intervenors' Summary of Damages is Woefully Inadequate Compelling Either Outright Denial of their Claims or Requiring Discovery to Defend Against their Claims of "Significant Emotional Distress"

The Intervenors' conclusory statements that they suffered damage causally linked to an alleged violation of this Court's November 2010 Agreed Order do not remotely satisfy their burden of proof. In fact, the conclusory statements provide a basis for this Court to summarily deny the Intervenors' claims, particularly after this Court provided them with ample opportunity to support them with the ordered Summary of Damages. Instead of providing a factual basis and support for their claims, the Intervenors' Summary of Damages conclude that, "Epstein and his counsel have caused significant emotional distress to [them]…creating fear about how he might use these documents and to whom he might distribute these documents." (D.E. 6432.) This is an incredible statement given that the Intervenors have never viewed the disc that slept untouched in a box in Fowler White's office for eight years and then was sealed after its discovery in February 2018 in

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the State Court Action. Rather, the Intervenors have failed to prove their claim that their significant emotional distress is caused by Epstein's counsel's (past) retention of a disc in a box.

B. The Intervenors' Claims of Sexual Abuse Against Epstein Were Resolved in 2010 and Each Executed a Full Release.

Likely in an effort to divert attention from their inadequate presentation of alleged damages, in Parts B and C of their Response (D.E. 6446), the Intervenors argue that they should neither have to sit for deposition, nor undergo independent mental examinations, because they previously alleged that Epstein sexually abused them. This reveals a disconnect with their settled sexual abuse allegations and their current allegations of significant emotional distress due to a disc. Their past allegations of sexual abuse are irrelevant to the issues now before the Court. *Each of the Intervenors' claims of sexual abuse against Epstein were resolved in July 2010, and each of the Intervenors executed a full release in favor of Epstein*. Thus, their claims of damages arising out of alleged sexual abuse, however disputed they were, are long-resolved and not at issue here. The damages-related issue here and now is solely what *significant* emotional distress they have suffered due to a disc sitting in a box in Fowler White's files for eight years.

"[T]he requirements of due process in a civil contempt proceeding are flexible, varying with the circumstances of each case." *Mercer v. Mitchell*, 908 F.2d 763, 769 n.11 (11th Cir. 1990). The Intervenors' damages claims are fraught with material factual issues which support allowing the pre-hearing discovery requested. The Intervenors criticize Epstein for "fail[ing] to explain why deposing" them is necessary. (D.E. 6446, at 5.) Epstein, however, has clearly explained his reasonable discovery and need based on the "significant" claim presented. The requested depositions (in addition to mental examinations) will elucidate what portion of the Intervenors' claimed emotional distress damages is attributable to a disc of e-mails sitting in a box for eight

years versus their other life events and choices, including incarceration, employment at strip clubs, and drugs as evidenced by the Intervenors' criminal history. (*See* D.E. 6440, Ex. A.)

Additionally, Epstein is entitled to depositions in advance of an evidentiary hearing with testimony. Otherwise, Epstein is unfairly undertaking analysis for the first time while hearing their answers, and cross-examining the Intervenors, at the final evidentiary hearing. The request for advance depositions is not so unique or extraordinary when a party is faced with a claim of damages or sanctions. Other bankruptcy courts have permitted depositions on the topic of emotional distress in civil contempt proceedings. *See In re Rivera Torres*, 309 B.R. 643, 651 (B.A.P. 1st Cir. 2004), *rev'd on other grounds*, 432 F.3d 20 (1st Cir. 2005).

The Intervenors argue that they "will either be able to carry their burden" of establishing entitlement to significant emotional distress damages "or not," and "[t]heir deposition will not add anything of importance to that inquiry." (D.E. 6446, at 5.) Epstein agrees that to date the Intervenors have failed to carry their burden. However, to defend against a monetary claim for significant emotional distress, a party is entitled to discover the facts and information that form the basis of the claim, including the nature, extent and quantum of emotional distress connected to an alleged violation of the November 2010 Agreed Order before that information is presented at an evidentiary hearing. Epstein has no intent of re-litigating their past claims against him. Rather, he seeks and is entitled to learn the claims' factual basis in advance, such as to avoid "ambush" at the evidentiary show cause hearing set for October 26, 2018.

C. The Intervenors Have Placed their Mental States "in Controversy" Providing the "Good Cause" for a Rule 35 Examination.

The Intervenors have placed their own mental states in controversy—not Epstein. The Intervenors' statement that, "it was Epstein and his attorneys who created the very issues that are

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now before the Court" is self-evidently absurd. (D.E. 6446, at 5.) It is the Intervenors who are participating in prosecuting this civil contempt proceeding and seeking damages for significant emotional distress.

Under the applicable law, the Intervenors' own Summary of Damages establishes only that they have placed their mental states in controversy. *See* D.E. 6432; *see also, e.g.*, *Reaves v. Wayne Automatic Fire Sprinklers, Inc.*, No. 2:11-cv-00049-CEH-SPC, 2011 WL 4837253 ([redacted]. Fla. Oct. 12, 2011). As such, Rule 35 entitles Epstein to the Intervenors' independent mental examinations. The Intervenors suggest that Rule 35 does not apply, but Epstein previously showed why this is incorrect. *See* Epstein's Motion, D.E. 6440 at n.4. *See also* Fed. R. Bankr. Proc. 7035; *see also generally In re Dillon*, 194 B.R. 533 (Bankr. S.D. Fla. 1996).

In fact, the Intervenors make no actual or genuine effort to suggest that their mental states are not in controversy under Rule 35. Instead, the suggest that the Court should not order their independent mental examinations because Epstein is making the request as a "retaliatory measure." There is simply no evidence that Epstein is "retaliating" against the Intervenors by requesting their independent mental examinations. The Intervenors are claiming that Epstein owes them money damages for their emotional distress resulting from the fact that a disc sat in a box in his former counsel's office for eight years. An independent mental examination is but a tool that is available to any litigant—*and will help the Court*—to evaluate the merit of these claims in terms of the nature and extent of the Intervenors' alleged emotional distress and parsing its various causes. This is not a Title VII case, as was the court's concern in *Winstead v. Lafayette County Board of Commissioners*, 315 F.R.D. 612 (N.D. Fla. 2016), and "retaliation" is a non-issue.

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Alternatively, the Intervenors advance the cursory argument that because Epstein is sufficiently wealthy he can obtain the information by other means. Epstein's ability to obtain public information about the Intervenors—of somewhat limited utility by itself—is no substitute for his right to make a clear record through (1) the Intervenors' testimony and (2) a licensed professional as to how much, and what kind, of their emotional distress is attributable to the alleged violation of the November 2010 Agreed Order, as distinct from other life experiences.

D. The Intervenors Were Either Damaged by an Alleged Violation of this Court's 2010 Order or They Were Not and Epstein's Deposition Has No Bearing

As this Court has clearly recognized, the issue before it is whether Epstein had knowledge or possession of the disc/documents before February 2018. The Court and parties already know the answer to that question is "no" and Epstein's deposition is, at best, a mere formality, and at worst, blatant harassment in an effort to obtain an advantage or media attention in advance of the State Court Action's December trial. On August 14, 2018, Epstein served his show cause hearing exhibits on the parties, including the Intervenors, which included Epstein's Declaration attesting that he has never seen the disc, has never received a copy of it and only first learned of its existence in February 2018. *See* D.E. 6440, Ex. B.

As such, Epstein's testimony should not and logically cannot influence the Intervenors' claimed damages. Epstein requests this Court to require proof and presentation of damages by the Intervenors without viewing or reading Epstein's testimony, nor should counsel be allowed to inform them of its contents before the show cause hearing. The Intervenors' argument that they are "entitled" to use Epstein's deposition to "prove their case" is nonsensical. The Intervenors told this Court they were damaged – *past tense*. They either were or they were not damaged. The

Intervenors should be required to prove their significant emotional distress without drawing from Epstein's *future* deposition testimony.

E. [redacted]. and Jane Doe Were Not Parties to this Action and Therefore Not Governed by This Court's 2010 Order

Oddly, [redacted]. and Jane Doe have joined [redacted]. through the same counsel in presenting that they too suffered "significant emotional distress" from alleged violation of an Order entered in 2010 that (1) never applied to them because they were not a party to this Court's action and (2) they had no knowledge of before now in 2018. To say this borders on the unconventional argument is an understatement. [redacted]. and Jane Doe have no standing to claim any damages – let alone "significant emotional distress" – from an alleged violation of an Order that never contemplated them because they were never before present in this Court in this action. Epstein continues to oppose their claim and presents their lack of standing here.

CONCLUSION

The Intervenors' Response fails to demonstrate that Epstein is not entitled to take their depositions on the subject of their damages, or take their independent mental examinations under Rule 35. If the Court does not summarily deny the Intervenors' claims based on their Summary of Damages, Epstein respectfully requests that the Court allow him to discover facts and information necessary to defend against the "significant emotional distress" damages presented by the Intervenors against him.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on September __, 2018, a true and correct copy of the foregoing was served electronically to all registered users on the CM/ECF system, which includes counsel identified on the service list below.

RICE PUGATCH ROBINSON STORFER & COHEN, PLLC
101 [redacted]. Third Avenue, Suite 1800
Ft. Lauderdale, FL 33301
[redacted] ([redacted]) [fax]

By: /s/
CHAD P. PUGATCH (FBN 220582)
[redacted]

- AND –

I hereby certify that I am admitted to the Bar of the United States District Court for the Southern District of Florida and I am in compliance with the additional qualifications to practice in this Court set forth in Local Rule 2090-1(A).

LINK & ROCKENBACH, PA
1555 Palm Beach Lakes Boulevard, Suite 930
West Palm Beach, FL 33401
([redacted]; ([redacted] [fax]

By: /s/
SCOTT J. LINK (FBN [redacted])
[redacted]

Counsel for Jeffrey Epstein

SERVICE LIST

Jack Scarola Searcy, Denny, Scarola, Barnhart & Shipley, [redacted]. 2139 Palm Beach Lakes Boulevard West Palm Beach, FL 33409 [redacted] *Counsel for Bradley J. Edwards*	Bradley J. Edwards Brittany N. Henderson Edwards Pottinger LLC 425 N. Andrews Avenue, Suite 2 Fort Lauderdale, FL 33301-3268 [redacted] *Counsel for Farmer Jaffe, Weissing, Edwards, Fistos & Lehrman,* [redacted]
Paul G. Cassell S.J. Quinney College of Law at the University of Utah 383 S. University Street Salt Lake City, UT 84112-0730 cassellp@law.utah.edu *Counsel for* [redacted]*.,* [redacted]*. and Jane Doe*	Peter E. Shapiro Shapiro Law 8551 West Sunrise Boulevard, Suite 3000 Plantation, FL 33322 [redacted] *Counsel for* [redacted]*.,* [redacted]*. and Jane Doe*
Niall T. McLachlan Carlton Fields Jorden Burt, [redacted]. 100 S.E. Second Street, Suite 4200 Miami, FL 33131 [redacted] *Counsel for Fowler White Burnett,* [redacted].	Isaac M. Marcushamer Berger Singerman LLP 1450 Brickell Avenue, Suite 1900 Miami, FL 33131 [redacted] *Counsel for Liquidating Trustee*

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