

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF FLORIDA  
FORT LAUDERDALE DIVISION**  
[www.flsb.uscourts.gov](http://www.flsb.uscourts.gov)

IN RE:

CASE NO.: 09-34791-RBR

ROTHSTEIN ROSENFELDT ADLER, P.A.,

CHAPTER 11

Debtor.

---

**INTERVENOR-VICTIMS [REDACTED], [REDACTED], AND [REDACTED] RESPONSE TO JEFFREY  
EPSTEIN'S MOTION TO TAKE THEIR DEPOSITIONS AND TO COMPEL THEIR  
MENTAL EXAMINATIONS**

Intervenors [REDACTED], [REDACTED], and “[REDACTED]” (hereinafter collectively “the Victims”), proceeding pseudonymously, having previously been allowed to intervene in this action, and having participated in the Court’s hearings on these matters, now respond to Epstein’s motion to compel their depositions and to compel their mental examinations. Epstein’s motion, filed by a man who repeatedly sexually abused the victims, is obviously designed to do little more than harass the them. This is a summary contempt proceeding, caused by contumacious behavior by Epstein and his attorneys. The Court should allow Epstein to use his own misconduct as a way to facilitate harassing the victims. Accordingly, the Court should deny his motion in all respects.

**INTRODUCTION**

As explained in their motion to intervene, the Victims were all repeatedly sexually abused by Epstein when they were under the age of eighteen. Specifically, Epstein began sexually assaulting [REDACTED] when she was thirteen years old and continued to molest her on more than fifty occasions over three years. DE 6344 at 3. Similarly, Epstein also sexually assaulted [REDACTED], beginning when she was fourteen years old and continued to do so on numerous occasions. *Id.*

And Epstein sexually assaulted [REDACTED] on multiple occasions, beginning when she was fourteen years old. *Id.*

Later, as litigation developed from Epstein's sexual abuse, confidential materials were at issue before this Court. In contravention of this Court's order, Epstein's counsel Fowler White retained a copy of confidential materials related to the Victims. *Id.* at 5-6. And ultimately, through machinations yet to be fully explained, it appears that confidential information about the Victims contained in those materials was transmitted to Epstein.

In these contempt proceedings, the three Victims all successfully sought intervention to seek damages from Epstein and his attorneys. This Court then requested that the Victims file a summary of their damages. DE 6427. Pursuant to that directive, the Victims then filed what they believed to be adequate extension and summary of their damages request, suggesting that a presumptive minimum amount might be an appropriate way of assessing their damages in this case due to Epstein's improper retention of confidential materials. DE 6384. Epstein then contested the presumptive approach, arguing that the Victims could only proceed if they alleged specific actual damages. DE 6393 at 1. As part of his argument, Epstein moved to strike the Victims' summary, leading this Court to deny the motion while allowing the victims to supplement their summary to respond to the arguments made by Epstein. DE 6427. Thereafter, the victims filed a further Summary of Damages, alleging significant emotional distress. DE 6432.

After the victims filed their summary, Epstein did not file any answer or response, even though Epstein had previously filed a detailed Response in Opposition to Bradley Edwards' and Farmer Jaffe's Summaries of Damages for violation of the same order from this Court. *See* DE 6394. Accordingly, unlike the damages sought by Mr. Edwards which Epstein has specifically contested, as of this time Epstein has not specifically contested the damages sought by the Victims.

Instead, Epstein has now filed a sprawling Motion to Take the Intervenors' Depositions and to Compel Their Mental Examinations (DE 6440), raising a variety of issues, several of which have previously been decided and all of which lack merit.

### **ARGUMENT**

**A. The Victims' Summary of Damages Is Consistent with this Court's November 2010 Agreed Order.**

Epstein first alleges that the Victims' summary of damages somehow is unrelated to the Court's November 2010 Order forbidding Epstein and his lawyers from retaining copies of the Victims' confidential materials. DE 6440 at 3. But as the materials cited by Epstein himself make clear, the issue currently before the Court is whether there was a breach of the Court's order and "what are the actual damages *resulting from that breach*." (Aug. 17, 2018, Tr. at 18 (emphasis added)). Obviously, the Victims are alleging that, as a result of improper retention of their materials, actual damages resulted. They are entitled to seek damages "resulting from that breach" – which is what they have alleged in their summary of damages.<sup>1</sup>

**B. Epstein Should Not Be Allowed to Depose the Women He Abused.**

Epstein next argues that he should be entitled to depose the three victims – victims he sexually abused. Epstein's game plan is clear: He intends to further traumatize the victims through intrusive depositions. In past proceedings with the victims of his sexual assaults (including some of the same victims who are now before this Court), Epstein engaged attorneys to conduct brutal questioning of the victims so savage that it made local headlines. *See Jane Musgrave, Victims*

---

<sup>1</sup> Epstein briefly quotes a passage from the Court's April 13 hearing, suggesting that this was the Court's ultimate order on the scope of his deposition. DE 6440 at 4. But the Court ultimately allowed the Victims to take Epstein's deposition regarding any "allegations of federal civil contempt regarding the alleged discovery violations of the Agreed Order." DE 6366 at 5. Clearly all matters related to the Victims' emotional distress resulting from any violation by Epstein of the order are proper subjects for the deposition.

*Seeking Sex Offender's Millions See Painful Past Used Against Them*, Palm Beach News, Jan. 23, 2010, available at <http://www.palmbeachpost.com/news/crime/victims-seeking-sex-offenders-millions-see-painfulpasts-192988.html>.

In an effort to avoid further trauma resulting from these proceedings, the Victims originally pursued their damages through what might be called a liquidated damages/per se losses approach. *See* DE 6397 at 6. The Victims made clear that they would be further victimized if they were deposed. *See id.* It was only after the Court indicated that the Victims might need to further specify their damages claim that the Victims indicated that they would proceed under the significant emotional distress approach laid out in *In re McLean*, 794 F.3d 1313, 1325-25 (11th Cir. 2015).

As the Victims proceed under the *McLean* approach in this contempt proceeding, they concede that they are bound by the requirements of *McLean* to carry their burden of showing significant emotional harm to obtain monetary damages<sup>2</sup> – a point that Epstein emphasizes in his brief. But that fact hardly entitles Epstein to depose his Victims. Indeed, *McLean* itself clearly differentiates between compensatory sanctions and criminal/punitive sanctions in contempt cases. While punitive sanctions for contempt require a higher degree of due process protection, 794 F.3d at 1325 (discussing proof beyond a reasonable doubt and other requirements), *McLean* makes clear that “[a]t most, due process requires only ‘skeletal’ protections in a civil contempt proceeding.” *Id.* at 1324.

---

<sup>2</sup> Other forms of relief, such as attorneys’ fees, are not covered by *McLean* and present separate issues.

Epstein fails to explain why deposing the victims is necessary as part of the “skeletal” protections he needs to defend against civil contempt here. Indeed, his motion is replete with arguments as to why the issues before the Court are “narrow” (DE 6440 at 4) and why the Victims claims for damages will ultimately be shown to be “misplaced” (*id.*). Epstein also cites authority that emotional distress damages are only appropriate “where a natural and powerful emotional distress is readily apparent from the nature or extent of the wrongful conduct under the particular circumstances surrounding the . . . violation.” *In re Bishop*, 296 B.R. 890, 895 (Bankr. S.D. Ga. 2003). Assuming *arguendo* that this is the correct standard, the Victims will either be able to carry their burden of showing that such “readily apparent” circumstances exist or not. Their deposition will not add anything of importance to that inquiry.

It must also be emphasized that it was Epstein and his attorneys who created the very issues that are now before the Court. If they had never improperly retained a copy of the Victims’ confidential materials, the Victims would not be engaged in these proceedings. It is evident from his briefing that Epstein relishes the opportunity to compound the harm that he has already inflicted on the Victims through his sexual assaults. This Court should not add insult to injury by ordering further depositions of the Victims.

**C. Epstein’s Sexual Assault Victims Should Not be Compelled to Undergo Independent Medical Examinations.**

Epstein also argues that his Victims should be forced to undergo independent mental examinations (IMEs). But as with his legal authority regarding depositions, his authority for forcing the Victims to undergo intrusive IMEs is inapplicable. For example, Rule 35 of the Federal Rules of Civil Procedure applies in a full-blown civil proceeding – not this current contempt proceeding for which, “at most,” only “skeletal” due process protections are in play. *McLean*, 794 F.3d at 1324.

Moreover, under Rule 35, the burden is on the party seeking to force the examination to prove why the examination is needed. Rule 35 requires a showing both that mental condition is “in controversy” and the “good cause” exists for an examination. These requirements “are not simple formalities and are met neither by the mere conclusory allegations of the pleadings—nor by mere relevance to the case—but require an affirmative showing by the movant that each condition as to which the examination is sought is really and genuinely in controversy and that good cause exists for ordering each particular examination.” *Curtis v. Express, Inc.*, 868 F. Supp. 467, 468 (N.D.N.Y. 1994) (internal quotation omitted). Even in cases involving mere allegations of discrimination on the basis of sexual harassment, courts have been well aware of the risk of well-heeled defendants using medical examinations “as a sort of retaliatory measure . . . .” *Winstead v. Lafayette Cty. Bd. of Cty. Commissioners*, 315 F.R.D. 612, 617 (N.D. Fla. 2016) (denying IME in Title VII case due to this concern). Indeed, courts have been particularly skeptical where a defendant seeks to compel an IME without explaining carefully how that particular exam will shed light on issues in the case. *Id.* (noting “relatively limited value” of a psychological examination in a case involving emotional distress counsels in favor of the court denying such a motion).

Here, of course, the Court has before it not merely a defendant who has harassed a victim, but a defendant who has actually sexually abused three minor victims (and many others as well) on multiple occasions. Given the dynamics of sexual assault, the risk of retaliatory abuse of legal process here is far greater than in other cases in which courts have denied IMEs due to risk of retaliation. And reputed billionaire Epstein clearly has the resources to collect ample information about the Victims without the need for a medical examination. Indeed, he has already entered considerable information with his motion. *See* DE 6440 at 6 & Ex. A (discussing employment

history, drug usage behavior, and criminal records of Victims, and collecting extensive records about such issues). Reliance on this sort of information collected from independent sources, to the extent that it is relevant and admissible, offers a “less intrusive means” of Epstein arguing against emotional distress damages. *See Winstead*, 315 F.R.D. at 616.<sup>3</sup> As a result, Epstein has “made no showing that the information [he] seek[s] cannot be obtained by other discovery techniques.” *Marroni v. Matey*, 82 F.R.D. 371, 372 (E.D. Pa. 1979) (denying IME on this basis). The Court should deny his request for harassing and unnecessary IMEs.

**D. The Victims are Entitled to Use Epstein’s Deposition to Help Prove Their Case.**

In a remarkable two-paragraph section at the end of his motion, Epstein first argues that the Victims should not be able to base any part of their argument for damages on Epstein’s testimony at his upcoming deposition. DE 6440 at 9-10.<sup>4</sup> Epstein seems to believe that his testimony will somehow be irrelevant to the Victims’ damages claim, but in any event cites no legal authority for prohibiting the Victims from using his sworn testimony as part of their case for damages. The Victims are obviously entitled to use all discovery in this case in support of their claims, and any argument to the contrary by Epstein must be rejected.

Indeed, in clear contradiction to his argument that his testimony is irrelevant to the Victims’ damages, in the second paragraph of his argument, Epstein asks the Court to order that the Victims

---

<sup>3</sup> In another proceeding, Epstein has also recently deposed [REDACTED]. And he also had the opportunity to depose [REDACTED] and [REDACTED] in the pending state court proceeding, and elected not to do so.

<sup>4</sup> Whether Epstein will actually be deposed is not yet completely certain. The Court ordered that Epstein be deposed more than four months ago, on April 20, 2018. DE 6366 at 4. Yet due to various “scheduling” difficulties, Epstein avoided being deposed until a date was finally set for September. But once that date was set, Epstein sought mediation, promising to provide post-mediation dates for his deposition in the event that the mediation failed. And yet, as of this writing, Epstein’s counsel has failed to provide any post-mediation dates for Epstein’s deposition in this case.

be precluded from viewing his deposition testimony. DE 6440 at 10. If Epstein's testimony is, indeed, utterly irrelevant to their damages, then it is impossible to understand how reading that same irrelevant testimony could somehow alter the Victims' testimony on that subject.

What Epstein seems to be seeking is to somehow invoke the witness exclusion rule. *See* Fed. R. Evid. 615 (allowing witnesses to be excluded from trial). But that rule, by its terms, applies only at trial. And, in any event, it does not apply to parties in a case, Fed. R. Evid. 615(a), nor to victims of crimes, Fed. R. Evid. 615(d) (cross-referencing 18 U.S.C. § 3771(a)). Epstein is not entitled to any such relief.

**E. [REDACTED] and [REDACTED] Are Entitled to Seek Compensation Along with [REDACTED].**

Epstein appears to hide one last argument in a footnote. He argues that because only [REDACTED] was specifically listed as a party in the November 2010 agreed order, the other two victims – [REDACTED] and [REDACTED] – are not entitled to seek damages from his violation of the Court's order. DE 6440 at n.1

Epstein's efforts to develop a substantive argument in a footnote is procedurally improper. *See SmithKline Beecham Corp. v. Apotex Corp.*, 439 F.3d 1312, 1320 (Fed. Cir. 2006) ("arguments raised in footnotes are not preserved"). But in any event, his argument is without merit. This Court has previously allowed [REDACTED] and [REDACTED] to intervene in this matter because they have protected interests at stake. *See* DE 6360 ("[REDACTED], [REDACTED], and [REDACTED] . . . are permitted to intervene in this matter."). Of course, the basis for that ruling was that all three victims have confidential information, the protection of which lies at the center of this contempt proceeding. Epstein's has not carried the heavy burden of showing some reason to revisit the Court's earlier ruling allowing intervention by all three Victims.

**CONCLUSION**

The Court should deny Epstein's motion in all respects.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that 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, on this 10th day of September, 2018.

I HEREBY CERTIFY that the undersigned attorney is appearing pro hac vice in this matter pursuant to court order dated this 10th day of September, 2018.

Paul G. Cassell, Esq.  
S.J. Quinney College of Law at the  
University of Utah  
[REDACTED]  
Salt Lake City, UT 84112  
Telephone: [REDACTED]  
(above for address/contact purposes only, not to  
imply institutional endorsement)

By: /s/ Paul G. Cassell  
Paul G. Cassell (Utah Bar No. [REDACTED])  
[REDACTED]  
*Pro Hac Vice*

-AND -

I HEREBY CERTIFY that I am admitted to the Bar of the United State 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).

SHAPIRO LAW  
[REDACTED]  
[REDACTED]  
Plantation, Florida 33322  
Telephone: [REDACTED]

By: /s/ Peter E. Shapiro  
Peter E. Shapiro (FBN [REDACTED])  
[REDACTED]

*Attorneys for Intervenors* [REDACTED], [REDACTED], and [REDACTED]

SERVICE LIST

Bradley J. Edwards FLBN [REDACTED]  
Brittany N. Henderson FLBN [REDACTED] Edwards Pottinger LLC

[REDACTED]  
Fort Lauderdale, FL 33301 Phone: [REDACTED]  
Fax: [REDACTED]  
[REDACTED]

*Attorneys for Farmer, Jaffe, Weissing, Edwards, Fistos & Lehrman, P.L.*

Jack Scarola, Esq.  
Florida Bar No.: [REDACTED]  
David P. Vitale, Jr., Esq.  
Florida Bar No.: [REDACTED]  
Attorney E-Mails: [REDACTED]  
Primary E-Mail: [REDACTED]  
Searcy Denney Scarola Barnhart & Shipley, P.A.

[REDACTED]  
West Palm Beach, Florida 33409  
Phone: [REDACTED]  
Fax: [REDACTED]

*Attorneys for Bradley J. Edwards*

Scott J. Link, Esq.  
Link & Rockenbach, P.A.  
[REDACTED]

West Palm Beach, FL 33401  
Phone: [REDACTED]  
Fax: [REDACTED]

Chad P. Pugatch, Esq.  
Rice Pugatch Robinson Storfer & Cohen, PLLC  
[REDACTED]  
Ft. Lauderdale, FL 33301  
[REDACTED]

*Attorneys for Jeffrey Epstein*

Niall T. McLachlan  
Carlton Fields Jordan Burt, P.A.  
[REDACTED]  
Miami, FL 33131  
[REDACTED]  
*Counsel for Fowler White Burnett, P.A.*