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March 19, 2020

VIA ECF

The Honorable Lorna G. Schofield
United States District Court
Southern District of New York
40 Foley Square
New York, NY 10007

Re: Annie Farmer v. Darren K. Indyke et al., 19-10475-LGS-DCF

Dear Judge Schofield,

Pursuant to the Court's instructions at the March 5, 2020, pre-motion conference, Plaintiff Annie Farmer writes to state her position on the availability of punitive damages against the Estate of Jeffrey E. Epstein (the "Estate") in this case. As a preliminary matter, the Estate's proposed motion to dismiss punitive damages is procedurally premature. *See, e.g., Weyant v. Phia Grp. LLP*, No. 17 CIV. 8230 (LGS), 2018 WL 4387557, at *11 (S.D.N.Y. Sept. 13, 2018) (Schofield, J.). In any event, Plaintiff will be able to recover punitive damages against the Estate.¹

First, the law of the U.S. Virgin Islands ("USVI") applies to the issue of punitive damages. "In the context of tort law, New York utilizes interest analysis to determine which of two competing jurisdictions has the greater interest in having its law applied in the litigation." *Padula v. Lilarn Prop. Corp.*, 644 N.E.2d 1001, 1002 (N.Y. 1994). "[U]nder New York law—for punitive damages in particular—a court must consider the object or purpose of the wrongdoing to be punished and give controlling weight to the law of the jurisdiction with the strongest interest in the resolution of the particular issue presented." *Nat'l Jewish Democratic Council v. Adelson*, No. 18 Civ. 8787 (JPO), 2019 WL 4805719, at *6 (S.D.N.Y. Sept. 30, 2019). "[T]he choice-of-law inquiry for punitive damages provisions is necessarily 'defendant-focused.'" *Id.*

In this case, the USVI has a stronger interest in the issue of whether punitive damages are available. Epstein was domiciled in the USVI, not New York, and had private islands in the USVI. Compl. ¶¶ 22, 28. Defendants also chose to probate Epstein's Estate in and under the laws of the USVI. *Id.* ¶ 36. Having availed themselves of all of the benefits that USVI probate and estate law have to offer, Defendants cannot also seek to escape its drawbacks. As such, New York's choice-of-law rules dictate the application of USVI law to the issue of punitive damages.²

¹ This letter applies to the availability of punitive damages against only the Estate. Plaintiff can unquestionably obtain punitive damages against the living Defendant in this case, Ghislaine Maxwell, under both New York and USVI law. *See, e.g., Nicholas v. Wyndham Int'l, Inc.*, 301 F. Supp. 2d 407, 410 (D.V.I. 2002) ("[P]unitive damages may be awarded for conduct that is outrageous, because of defendant's evil motive or [her] reckless indifference to the rights of others."); *Feldman v. Knack*, 170 A.D.3d 667, 670 (N.Y. App. Div. 2019) (punitive damages appropriate in sexual assault case because "the defendant's acts were particularly heinous").

² Under the doctrine of depeçage, the interest analysis only applies to punitive damages, and New York law still applies to the underlying claims and compensatory damages. *See Adelson*, 2019 WL 4805719, at *6.



Second, USVI law would allow for an award of punitive damages against the Estate in this case. When determining how best to apply common law, USVI courts apply what is known as the *Banks* analysis. See *Banks v. Int'l Rental & Leasing Corp.*, 55 V.I. 967, 979 (2011). “[I]nstead of mechanistically following the Restatements, courts should consider three non-dispositive factors to determine Virgin Islands common law: (1) whether any Virgin Islands courts have previously adopted a particular rule; (2) the position taken by a majority of courts from other jurisdictions; and (3) most importantly, which approach represents the soundest rule for the Virgin Islands.” *Gov’t of the V.I. v. Connor*, 60 V.I. 597, 600, 602 (2016).

The first *Banks* factor is neutral because USVI courts have not adopted a rule as to whether a plaintiff can pursue punitive damages against the estate of a deceased tortfeasor. As to the second factor, numerous courts have held that plaintiffs may recover punitive damages against the estate of a deceased tortfeasor. See, e.g., *Haralson v. Fisher Surveying, Inc.*, 31 P.3d 114, 117 (Ariz. 2001); *Tillett v. Lippert*, 909 P.2d 1158, 1162 (Mont. 1996); *Perry v. Melton*, 299 S.E.2d 8, 12 (W. Va. 1982). Those courts have reasoned that punitive damages do not only serve to punish wrongdoers, but also to “motivate others not to engage in similar action in the future.” *Kaopuiki v. Kealoha*, 87 P.3d 910, 928 (Haw. Ct. App. 2003).³ And even courts that generally do not allow for punitive damages against a deceased tortfeasor’s estate have acknowledged that punitive damages might be available where the deceased tortfeasor takes his own life “as an escape from punitive damages.” *Crabtree ex. Rel. Kemp v. Estate of Crabtree*, 837 N.E.2d 135, 139 (Ind. 2005). Epstein abused countless young females and subsequently used power, wealth, and intimidation to avoid proportionate punishment for his countless crimes. See, e.g., Compl. ¶¶ 6, 7, 16, 17, 31, 75. Once he was finally imprisoned in New York, he signed his will and almost immediately caused his own demise. See *id.* ¶¶ 34, 35. Given these unique facts and the need to deter others from committing such heinous crimes and then using power to avoid the consequences, the second *Banks* factor weighs heavily in favor of allowing for punitive damages.

Although none of the three *Banks* factors is dispositive, the third factor—“which approach represents the soundest rule for the Virgin Islands”—is the most important. See *Connor*, 60 V.I. at 600. The soundest rule for the USVI is to allow for punitive damages against an estate in these extraordinary circumstances. Again, Epstein spent his life avoiding punishment, used wealth, power, intimidation, and threats to prevent his victims from seeking justice, and then caused his own demise once he was about to face real punishment for his countless crimes. Allowing for punitive damages in this case would be in line with the general deterrence principle behind punitive damages because it would deter others from manipulating the justice system and silencing victims of sexual abuse to avoid punishment. The absence of any USVI law to the contrary, and the extraordinary nature of Epstein’s sex-trafficking enterprise, counsel in favor of such a rule.

For the foregoing reasons, punitive damages are available against all Defendants in this case.

³ See also, e.g., *Ellis v. Zuck*, 546 F.2d 643, 644–45 (5th Cir. 1977) (Alabama law); *Estate of Farrell ex rel. Bennett v. Gordon*, 770 A.2d 517, 521–22 (Del. 2001); *Hofer v. Lavender*, 679 S.W.2d 470, 474 (Tex. 1984).

BSF

Sincerely,

/s/ Sigrid S. McCawley

David Boies, Esq.
Sigrid S. McCawley, Esq.
Joshua I. Schiller, Esq.

cc: Counsel of Record (via ECF)
