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March 26, 2020

VIA ELECTRONIC COURT FILING

Hon. Lorna G. Schofield
Thurgood Marshall
United States Courthouse
40 Foley Square
New York, NY 10007

Re: Annie Farmer v. Darren K. Indyke and Richard D. Kahn, in their capacities as the executors of the Estate of Jeffrey Edward Epstein, et al., 19-cv-10475-LGS-DCF

Dear Judge Schofield:

We represent Defendants Darren K. Indyke and Richard D. Kahn, Co-Executors of the Estate of Jeffrey E. Epstein (together, the "Co-Executors"), in the above-referenced action. We write in response to Plaintiff's March 19, 2020 letter regarding her claim for punitive damages. In addition to being contrary to law, permitting Plaintiff to maintain her punitive damages claim would impede settlement discussions by enabling her to use the (legally baseless) prospect of obtaining punitive damages as (misplaced) leverage. There is no sound reason for it to stand.

First, Judges in this District regularly dismiss and strike punitive damages claims at the pleadings stage. See, e.g., *The Cookware Co. (USA), LLC v. Austin*, No. 15 Civ. 5796, 2016 U.S. Dist. LEXIS 177691, at *17 (S.D.N.Y. Dec. 8, 2016) (Batts, J.) (granting motion to dismiss claim for punitive damages without leave to replead because allegations regarding defendant's bad-faith conduct were conclusory and did not rise to the required level of malice); *SJB v. N.Y.C. Dep't of Educ.*, No. 03 Civ. 6653, 2004 U.S. Dist. LEXIS 13227, at *25-26 (S.D.N.Y. July 14, 2004) (Buchwald, J.) (granting motion to dismiss statutorily unavailable punitive damages claims); *Kunica v. St. Jean Fin.*, 97 Civ. 3804, 1998 U.S. Dist. LEXIS 11867, at *26 (S.D.N.Y. July 29, 1998) (Sweet, J.) (granting motion to dismiss claim for punitive damages because, even if conduct alleged in complaint was true, it did not rise to the level necessary to award punitive damages). See also *In re Merrill Lynch Auction Rate Sec. Litig.*, 851 F. Supp. 2d 512, 544 (S.D.N.Y. 2012) (granting motion to strike sections of complaint asserting punitive damages); *Nash v. Coram Healthcare Corp.*, No. 96 Civ. 0298 (LMM), 1996 U.S. Dist. LEXIS 9101, at *15 (S.D.N.Y. June 27, 1996) ("The motion to strike the punitive damages prayer from the Complaint is Granted.").

Second, Plaintiff cites no authority justifying a departure from black-letter law establishing that the place of a tort (here, New Mexico and New York) governs punitive damages. When determining what state's law applies, courts look to the choice of law rules of the forum state. *Simons v. Marriott Corp.*, 92 Civ. 3762 (SWK), 1993 U.S. Dist. LEXIS 14365, at *15 (S.D.N.Y. Oct. 12, 1993). Under New York law, the law of the state where a tort occurs generally applies to punitive damages. *Starr Indem. & Liab. Co. v. Am. Claims Mgmt.*, No. 14-cv-0463-JMF, 2015 U.S.

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Dist. LEXIS 60272, *7 (S.D.N.Y. May 7, 2015) (“Because punitive damages are conduct-regulating, ‘the law of the jurisdiction where the tort occurred will generally apply.’”) (quoting *Deutsch v. Novartis Pharms. Corp.*, 723 F. Supp. 2d 521, 524 (E.D.N.Y. 2010); *Guidi v. Inter-Continental Hotels Corp.*, No. 95-CV-9006, 2003 U.S. Dist. LEXIS 6390, at *1 (S.D.N.Y. Apr. 16, 2003)); *AHW Inv. P’ship, MFS, Inc. v. Citigroup Inc.*, 661 F. App’x 2, 5 (2d Cir. 2016) (“[I]t is the place of the allegedly wrongful conduct that generally has superior ‘interests in protecting the reasonable expectations of the parties who relied on the laws of that place to govern their primary conduct and in the admonitory effect that applying its law will have on similar conduct in the future.’”).

Here, Plaintiff alleges torts occurring in New York and New Mexico. (Compl. ¶¶ 25, 29, 51-54, 56, 58-69.) She also (i) chose to sue in New York, (ii) which is only possible per a New York statute, EPTL § 11-3.2, (iii) for violations of New York law, and (iv) relies on another New York law (CPLR § 215) to assert claims that are otherwise time-barred. Plaintiff argues that, because Decedent was domiciled in the USVI and owned real property there, and because his estate is being probated there decades after the alleged torts occurred, USVI law should apply to punitive damages. However, Plaintiff cites no legal authority holding that such factors justify a departure from the choice-of-law principle requiring application of the laws of the locations of alleged torts.

Padula v. Lilarn Properties Corp., 84 N.Y.2d 519 (1994), which Plaintiff cites, supports the Co-Executors’ position. In *Padula*, a New York domiciliary sued another New York domiciliary for torts in Massachusetts. *Id.* at 521-22. The court held Massachusetts law applied, finding that when the law at issue involves the appropriate standards of conduct, “the law of the place of the tort ‘will usually have a predominant, if not exclusive, concern.’” *Id.* Plaintiff reliance on *Nat’l Jewish Democratic Council v. Adelson*, No. 18-CV-8787 (JPO), 2019 WL 6895435 (S.D.N.Y. Dec. 18, 2019), is also misplaced. In *Adelson*, “New York’s interest [was] relatively attenuated” because “[i]ts sole connection to th[e] suit [was] that the suit was filed here.” *Id.* at *15.

Under the reasoning set forth in *Padula* and *Adelson*, New Mexico and New York law should apply to Plaintiff’s punitive damages claim. The USVI has no interest in applying its laws on punitive damages to alleged torts occurring in New York and New Mexico. The sole connection to the USVI is that the Decedent’s Estate is being probated there, decades after the alleged tortious conduct took place—*i.e.*, a connection much weaker than the one deemed “tenuous” in *Adelson*.

Third, USVI law bars Plaintiff’s recovery of punitive damages in any event. To determine common law, USVI courts apply a three factor “*Banks*” analysis: (1) whether USVI courts adopted a rule pre-*Banks*; (2) the position taken by a majority of other jurisdictions; and (3) which approach is the soundest for the USVI. *Gov’t of Virgin Islands v. Connor*, No. S. CT. CIV. 2013-0095, 2014 WL 702639, at *1 (V.I. Feb. 24, 2014). These factors favor the Co-Executors: (1) pre-*Banks*, USVI courts expressed approval for Restat. § 908 (see *Hamilton v. Dowson Holding Co.*, 51 V.I. 619, 628 (D.V.I. 2009) (considering the inverse issue)); (2) a majority of other jurisdictions preclude punitive damages against a tortfeasor’s estate (2 Linda L. Schlueter, *Punitive Damages* § 20.4 (7th ed. 2015)); and (3) post-*Banks*, USVI courts have held § 908 is the soundest rule (*Powell v. Chi-Co’s Distrib.*, ST-13-TOR-14, 2014 V.I. LEXIS 21, at *5 n.13 (U.S.V.I. Super. Ct. Apr. 3, 2014) (Restat. §908(2) “reflects the common law of this jurisdiction”).

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Respectfully submitted,

s/Bennet J. Moskowitz
Bennet J. Moskowitz

cc: Counsel of Record (via ECF)