

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

_____)	
RONNIE BARRETT,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 07-250 (RCL)
)	
ANDRE CHREKY, et al.,)	
)	
Defendants.)	
_____)	

PRETRIAL ORDER

A pretrial conference was held on January 26, 2010. Upon consideration of the parties' joint pretrial statement [87] and the arguments of counsel at the pretrial conference, the Court hereby enters the following Pretrial Order:

I. Motions *in Limine*

Currently, there are four pending motions *in limine* which must be resolved before trial. The Court will address the motions in turn.

A. Plaintiff's Motions *in Limine*

Plaintiff has withdrawn her motions [75, 76] *in limine*. Accordingly, the motions are DENIED as moot.

B. Defendants' Motion *in Limine* Related to Damages

Defendants' motion [79] related to damages seeks to exclude certain evidence pertaining to damages and certain claims of sexual harassment. Specifically, defendants seek to exclude five topics from trial. As set forth below, the motion is GRANTED in part and DENIED in part.

1. Request to Exclude Evidence of Sexual Harassment Claims for Which Plaintiff Cannot Recover

Defendants' first request seeks to exclude evidence or argument at trial of sexual harassment claims for which plaintiff cannot recover (other than as background evidence for plaintiff's claim of retaliation upon which she may recover). Defendants argue that such evidence is inadmissible because plaintiff limited her claim to lost income and thus cannot recover compensatory or punitive damages. (Mem. [80] at 6-7.)

Defendants misstate plaintiff's sexual harassment claim. Plaintiff claims that defendants' sexual harassment caused her economic injury, including: "lost income from Mr. Chreky blocking her books, misappropriating her tips, and depressing her salary; harm to her professional reputation; economic injury flowing from her termination or constructive discharge; and reasonable expenses incurred in her pursuit of her District of Columbia Human Rights Act ("DCHRA") claim of sexual harassment." (Opp'n [92] at 2.) Thus, the jury must determine not only whether defendants are liable for sexual harassment, but also what damages, if any, are appropriate. Accordingly, any relevant evidence related to the liability or damages components of plaintiff's claims is admissible, provided its probative value outweighs any unfair prejudice. *See* FED. R. EVID.402, 403.

First, evidence of defendants blocking plaintiff's books, misappropriating her tips, depressing her salary, denying her salary increases, denying career opportunities, and denigrating her skills to clients because she refused to engage in sexual activity with Andre Chreky is relevant to establish sexual harassment and potential damages. The alleged conduct directly supports plaintiff's claim that she was subject to sexual harassment, and such conduct may

support damages in a sexually hostile work environment claim. *See Psychiatric Inst. of Wash. v. District of Columbia Comm'n on Human Rights*, 871 A.2d 1146, 1152 (D.C. 2005) (stating that retaliatory conduct is relevant to a sexually hostile work environment claim). Moreover, plaintiff alleges that defendants' conduct reduced her income by tens of thousands of dollars. (Opp'n [92] at 10.) Thus, this evidence is admissible under Rules 402 and 403 because it is relevant to plaintiff's claims and the probative value outweighs any unfair prejudice.

Second, evidence of economic damages suffered by plaintiff as a result of defendants' termination or constructive discharge of plaintiff as an act of sexual harassment is relevant. If a jury concludes that her termination was an act of sexual harassment, plaintiff may recover compensatory damages for harm to her professional reputation, *see Arthur Young & Co. v. Sutherland*, 631 A.2d 354, 372 (D.C. 1993) (concluding that the DCHRA includes all the remedies available under 42 U.S.C. §§ 1981, 1982), loss of future earnings, *see Williams v. Pharmacia, Inc.*, 137 F.3d 944, 952-53 (7th Cir. 1998) (upholding a jury award of lost future earnings under Title VII), and reasonable expenses incurred as a result of pursuing remedies under the DCHRA. D.C. Code §§ 2-1403.13(a)(1)(d), 2-1403.13(a)(2). Thus, this evidence is central to plaintiff's claim. Moreover, the probative value of this evidence far outweighs any danger of unfair prejudice to defendants. Accordingly, evidence of economic damages resulting from plaintiff's termination is admissible.

Last, evidence of harassment against plaintiff or others at Andre Chreky Salon, even if not compensable, contributes to plaintiff's hostile work environment claim. Indeed, the harassment of others is relevant to a hostile work environment claim, and as discussed below, evidence of harassment of others is not unfairly prejudicial. The Court, however, will only admit

evidence of harassment that occurred at Andre Chreky Salon because as discussed below, evidence of harassment that occurred at Piaf's Salon is inadmissible. Accordingly, defendants' first request is GRANTED in part and DENIED in part.

2. Request to Exclude Any Alleged Retaliatory Act Occurring Prior to November 8, 2005

Defendants' second request seeks to exclude any allegations of retaliatory acts that occurred prior to November 8, 2005. Defendants argue that any retaliatory book blocking allegations before November 8, 2005, are time-barred because book blocking is a discrete act. (Mem. [80] at 8.) Defendants' argument fails.

Retaliatory acts against plaintiff that occurred prior to November 8, 2005 are relevant to her claim of retaliation. Plaintiff's claim of retaliation, although pleaded in only one count, consists of two forms of retaliation: the discrete act of her retaliatory termination and the continuing pattern of retaliatory actions which constituted a retaliatory hostile work environment. *Cf. Holmes-Martin v. Leavitt*, 569 F. Supp. 2d 184, 192 (D.D.C. 2008) (refusing to dismiss a claim that is not specifically identified in the complaint where the plaintiff provided factual support for the claim throughout her complaint to put the defendant on notice of the claim). Thus, because plaintiff has pleaded a retaliatory hostile work environment, defendant may still be liable for conduct before November 8, 2005, under the continuing violation doctrine. Indeed, this Court has already held that the continuing violation doctrine applies to plaintiff. *Barrett v. Chreky*, 634 F. Supp. 2d 33, 36 (D.D.C. 2009).

In addition, book blocking fails to qualify as a discrete act. *Id.* The effect of a single incident of book blocking results in a lost income of \$50 to \$100. A reasonable person would

not make a charge of discrimination from a single incident of book blocking. Rather, only after repeated book blocking would such conduct rise to the level of actionable retaliation. *See Nat'l R.R. Passenger Corp. v. Morgan*, 536 U.S. 101, 115 (2002) (stating that the “very nature” of hostile work environment claims “involves repeated conduct”). Accordingly, evidence of retaliatory conduct prior to November 8, 2005, is relevant to plaintiff’s claim of a retaliatory hostile work environment. In addition, defendants have failed to demonstrate that such evidence would unfairly prejudice them. Therefore, retaliatory acts that occurred before November 8, 2005, are admissible.

Defendants further assert that if the continuing violation doctrine applies, evidence of retaliatory acts before plaintiff’s return from maternity leave in May 2005 should be excluded as time-barred. (Mem. [80] at 9 n.6.) The Court finds that this argument without merit. Plaintiff was an employee of defendants from September 2, 2003, to December 6, 2008, even though she took a period of maternity leave. That plaintiff was on maternity leave only explains the lapse in retaliatory actions; it does not reset the statutory clock. *See Strickland v. First Bancshares, Inc.*, No. 2:06-CV-199, 2008 WL 1776410, at *8 (N.D. Ind. Apr. 15, 2008). Thus, plaintiff may present relevant evidence of retaliatory acts that occurred before her maternity leave.

Accordingly, defendants’ second request is DENIED.

**3. Request to Exclude Any Claim that Plaintiff Faced Intolerable
Conditions and Was Forced to Resign**

Defendants’ third request seeks to exclude evidence that plaintiff was forced to resign because of intolerable conditions. Defendants contend that such evidence is not relevant and would be unduly prejudicial because plaintiff has testified that she was fired. (Mem. [80] at 9-

10.) The Court disagrees. Evidence that plaintiff was forced to resign is relevant to her alternative theory of constructive discharge. Plaintiff has not abandoned that claim, and defendants can use plaintiff's testimony that she was fired to her rebut her allegations at trial. Accordingly, defendants' third request is DENIED.

4. Request to Exclude Any Claim That Plaintiff Is Entitled to Back Pay

During the pretrial conference, defendants withdrew this request. Accordingly, defendants' fourth request is DENIED as moot.

5. Request to Exclude Any Evidence That Plaintiff Was Forced to Resign from Andre Chreky Salon Because of Incidents That Occurred Before mid-May 2005

Defendants' final request seeks to exclude any evidence that plaintiff resigned from the salon due to incidents that occurred before mid-May 2005. The Court disagrees. Incidents that occurred before mid-May 2005 are relevant to plaintiff's alternative claim that she was constructively discharged. Moreover, the probative value of this evidence would not result in unfair prejudice to defendants. The Court, however, will only admit evidence of incidents that occurred at Andre Chreky Salon because as discussed below, evidence of incidents that occurred at Piaf's Salon is inadmissible. Accordingly, defendants' fifth request is GRANTED in part and DENIED in part.

C. Defendants' Motion *in Limine* Related to Defendants' Prior Bad Acts

Defendants' Motion [82] *in Limine* seeks to exclude certain evidence related to matters other than plaintiff's claims of harassment and retaliation and potential damages. Specifically, defendants ask the Court to preclude plaintiff from introducing evidence or argument on thirteen

topics at trial. As set forth below, the motion is GRANTED in part and DENIED in part.

1. Request to Exclude Evidence That Employees Were Not Properly Compensated for Overtime

Defendants' first request seeks to exclude evidence or argument at trial that plaintiff or others were not properly compensated for overtime during their employment with Andre Chreky, Inc. (Mem. [82] at 7.) Defendants contend that any allegations that plaintiff was not properly compensated are irrelevant and inadmissible under FED. R. EVID.402 because plaintiff's claim under the Fair Labor Standards Act ("FLSA") and the D.C. Wage and Hour Act were dismissed. Plaintiff has stated that they do not intend to introduce evidence relating to defendants' FLSA or D.C. Wage and Hour Act violations. (Opp'n [91] at 9.) Accordingly, defendant's request is DENIED as moot.

2. Request to Exclude Evidence that Defendants Withheld Tips

Defendants' second request seeks to prevent plaintiff from introducing evidence or argument at trial that plaintiff or others had tips withheld during their employment with Andre Chreky, Inc. Defendants argue that allegations of tip withholding are irrelevant and inadmissible under Rule 402 of the Federal Rules of Evidence because the Court dismissed plaintiff's claim with respect to defendants withholding her tips. (Mem. [82] at 7.) In the alternative, defendants contend that the evidence is inadmissible under Rule 404(b) as a prior bad act. (*Id.* at 16.)

Defendants' arguments fail. Dismissal of a claim does not render all evidence relating to that claim inadmissible. *See United Air Lines v. Evans*, 431 U.S. 553, 558 (1977) (explaining that evidence of a dismissed claim may be relevant for background evidence, even though it has no legal consequence when separately considered); *DeMedina v. Reinhardt*, 444 F. Supp. 573,

578 (D.D.C. 1978) (emphasizing that evidence of dismissed claims is relevant evidence of discrimination of the timely claims). If the evidence is relevant to the surviving claims, the evidence may be admissible. *DeMedina*, 444 F. Supp. at 578.

Here, evidence of defendants withholding tips is admissible because it is relevant to plaintiff's claims for retaliation and sexual harassment. *See Miller v. Holzman*, 563 F. Supp. 2d 54, 81 (D.D.C. 2008) (stating that under the Federal Rules of Evidence, evidence is relevant if it has "some tendency to make any material fact more or less probable"). Plaintiff alleges that defendants withheld tips as punishment for rejecting the sexual advances of Andre Chreky. Indeed, evidence of this allegation is relevant to plaintiff's claim for retaliation under Rule 401. In addition, evidence of tip withholding is essential to plaintiff's claim for economic damages because she must be able to show how much she would have earned if not for defendants' retaliatory actions. Accordingly, evidence of defendants' withholding of tips is admissible under FED. R. EVID.402. *See* FED. R. EVID.402 (stating that all relevant evidence is admissible unless the admission of relevant evidence is prohibited by the Federal Rules of Evidence, the Supreme Court, or an Act of Congress).

In addition, defendants' withholding of tips is admissible under Rule 608(b) of the Federal Rules of Evidence for the purpose of attacking the credibility of defendants. Rule 608(b) allows a party to inquire about specific acts on cross-examination if the acts are probative of the witness's character of for truthfulness. FED. R. EVID.608(b). Prior acts of stealing which involve an element of deceit may be admissible as evidence probative of a witness's character for truthfulness. *See Riddick v. United States*, 806 A.2d 631, 638 (D.C. 2002) (citing *United States v. Smith*, 551 F.2d 348, 363 (D.C. Cir. 1976)). Here, withholding plaintiff's tips constituted a

theft crime, conversion, which involves deceit. Even though the claim of conversion was dismissed, the acts may be introduced to attack defendants' character for truthfulness. Therefore, evidence of withholding plaintiff's tips is admissible under Rule 608(b). Accordingly, defendants' second request is DENIED.

3. *Request to Exclude Evidence that Defendants Breached a Contract with Plaintiff*

Defendants' third request seeks to preclude plaintiff from introducing evidence or argument at trial that Andre Chreky breached a contract with plaintiff. Defendants' argument is that the evidence of the breach of contract is inadmissible because plaintiff's breach of contract claim was dismissed. (Mem. [82] at 7-8, 16.) As stated above, the evidence of a breach of contract is not inadmissible solely because the Court dismissed plaintiff's claim. If plaintiff introduced this evidence to recover last wages, it would be inadmissible. Plaintiff, however, seeks to introduce this evidence in support of her sexual harassment claim. In particular, plaintiff wishes to use the evidence to demonstrate the *quid pro quo* form of sexual harassment used by Andre Chreky. (Opp'n [91] at 10.) Accordingly to plaintiff, to receive the wage which she thought she was entitled to, plaintiff would have had to perform sexual favors for Andre Chreky. When plaintiff declined, defendants refused to increase her salary. Evidence of such an allegation is directly relevant to plaintiff's claims of sexual harassment and retaliation. Accordingly, the evidence is admissible under FED. R. EVID.402, and defendants' third request is DENIED.

**4. Request to Exclude Evidence that Defendants Violated D.C.'s
Cosmetology Licensing Requirements**

Defendants' fourth request seeks to exclude evidence or argument at trial that defendants violated cosmetology licensing requirements of the District of Columbia. Defendants, however, wish to preserve their right to introduce evidence that plaintiff failed to mitigate her damages by allowing her license to expire. The parties have agreed to a stipulation on this issue.¹ Plaintiff will not introduce evidence that defendants violated cosmetology licensing requirements to demonstrate *modus operandi*, and defendants will not introduce evidence that plaintiff failed to mitigate her damages by allowing her license to expire. The parties, however, reserve the right to introduce evidence on licensing for the limited purpose of impeachment. Accordingly, defendants' fourth request is DENIED as moot.

5. Request to Exclude Evidence of Defendants' IRS Reporting Violations

Defendants' fifth request seeks to exclude the introduction of evidence or argument at trial that defendants violated income reporting requirements of the Internal Revenue Service ("IRS"). At the pretrial conference, the parties stated that they will not introduce evidence regarding deductions on tax returns. Thus, in that respect, defendants' request is DENIED as moot.

There remains, however, the question of whether evidence of defendants' under-reporting of tips, and encouraging employees to do the same, is admissible. Plaintiff argues that such evidence is admissible for two reasons: (1) it is relevant to plaintiff's claim for economic

¹ Plaintiff's counsel, with the consent of defendants' counsel, informed the Court of this stipulation and its details on Monday, February 1, 2010 via telephone.

damages, and (2) it is relevant to defendants' character for truthfulness. (Opp'n [91] at 14.) First, the Court finds that such evidence is relevant to plaintiff's claim for economic damages in order to show plaintiff's total compensation she would have earned if she were still employed by defendants. Plaintiff, however, may only introduce evidence that defendants' encouraged the under-reporting of tip income. Plaintiff cannot introduce substantive evidence of any reporting violations of defendants. The probative value of any reporting violations by defendant is substantially outweighed by unfair prejudice of litigating tax issues that are not relevant to plaintiff's sexual harassment and retaliations claims. *See* FED. R. EVID.403. Second, the Court concludes that evidence of violating IRS reporting requirements is inadmissible as probative of defendants' character for truthfulness because the probative value of the evidence is substantially outweighed by the danger of unfair prejudice and the waste of time of litigating tax issues. Accordingly, defendants' fifth request is GRANTED in part and DENIED in part.

6. Request to Exclude Evidence of Obstruction of Justice or Witness Interference

Defendants' sixth request seeks to exclude the introduction of evidence or argument that defendants obstructed justice or otherwise interfered or attempted to interfere with the testimony of witnesses or potential witnesses in this case. Defendants argue that this evidence is irrelevant to plaintiff's claims of harassment and retaliation and should therefore be excluded. (Mem. [82] at 8.) In the alternative, defendants argue that the evidence is inadmissible under Rule 404(b). (*Id.* at 15.)

Defendants arguments fail. Evidence of witness intimidation or bribery is admissible under Rule 608(b) because it directly relates to defendants' character for truthfulness. *See United*

States v. Manske, 186 F.3d 770, 776 (7th Cir. 1999) (stating that witness intimidation is probative of truthfulness). Accordingly, defendants' sixth request is DENIED.

7. Request to Exclude Evidence of Misuse of Corporate Funds

Defendants' seventh request asks the Court to prohibit plaintiff from introducing or arguing that Andre Chreky and/or Serena Chreky misused corporate funds of Andre Chreky, Inc., or SPAC, LLC, which was previously dismissed from this matter. Defendants argue that evidence of misuse of corporate funds is irrelevant to plaintiff's pending claims and would only unfairly prejudice defendants. (Mem. [82] at 8.) Defendants' argument fails for several reasons. First, plaintiff has alleged that Andre Chreky invited her to stay at a hotel with him on numerous occasions and that he used to invite other employees to hotel rooms for sex. Defendants' corporate credit card, which is the card Andre Chreky uses because he does not have his own credit card, was used frequently at hotels near the salon. Thus, the evidence is relevant to plaintiff's claim of a sexually hostile work environment in which Andre Chreky would invite employees to engage in sexual acts at local hotels.

Second, evidence of misuse of corporate funds is relevant to plaintiff's claim for damages. Punitive damages are related to the culpability of a defendant and the defendant's ability to pay. *Faison v. Nationwide Mortg. Corp.*, 839 F.2d 680, 691 (D.C. Cir. 1987). Indeed, evidence of the defendant's net worth is essential in a claim for punitive damages. *See Bassi v. Patten*, 592 F. Supp. 2d 77, 85 (D.D.C. 2009) (Bates, J.). Here, plaintiff maintains that defendants' net worth should include the assets of Andre Chreky and his wife, Andre Chreky Salon, and SPAC because the Chrekys treat the assets of the Salon and SPAC as their own. (Opp'm [91] at 21 n.15.) Thus, plaintiff argues that the Salon and SPAC are "alter egos" of

Andre Chreky and his wife. Accordingly, misuse of corporate funds is relevant to plaintiff's alter ego theory for the purposes of calculating defendants' net worth and is therefore admissible.

Finally, the misuse of corporate funds is admissible under Rule 608(b) because it is probative of defendants' character for truthfulness. Accordingly, defendants' seventh request is DENIED.

8. *Request to Exclude Evidence that Defendants Harassed or Retaliated Against Other Individuals*

Defendants' eighth request seeks to exclude evidence or argument that defendant Andre Chreky harassed or retaliated against individuals other than plaintiff. Defendants argue that this evidence is inadmissible because it seeks to show that defendants acted in conformity with the prior bad acts. (Mem. [82] at 11.) Plaintiff, however, does not seek to introduce evidence of harassment of other individuals to prove conformity, but to prove motive and intent. When offered to prove motive or intent, such evidence is admissible under Rule 404(b) in sexual harassment cases. *See, e.g., Webb v. Hyman*, 861 F. Supp. 1094, 1110-11 (D.D.C. 1994) (stating that "prior discriminatory conduct is recognized as probative in an employment discrimination case on the issue of motive or intent") (citation and quotation omitted). Indeed, testimony by others describing sexual harassment by the same defendant is admissible to show that the harassment was sufficiently severe and pervasive to constitute a hostile work environment. *See Broderick v. Ruder*, 685 F. supp. 1269, 1277-78 (D.D.C. 1998). Moreover, simply because this evidence paints defendants in a bad light, the evidence is not so unfairly prejudicial that it substantially outweighs the evidence's probative value. *United States v. Stover*, 576 F. Supp. 2d 134, 143 (D.D.C. 2008). Accordingly, evidence that defendants harassed or retaliated against

other individuals is admissible under Rule 404(b) and defendants' eighth request is DENIED. Nevertheless, as discussed in greater detail below, plaintiff can only introduce evidence that defendants harassed or retaliated against other employees of the Andre Chreky Salon. The probative value of any evidence of harassment or retaliation against employees from Piaf's Salon is substantially outweighed by the danger of unfair prejudice to defendants. FED. R. EVID.403.

With respect to defendants' eighth request, plaintiff also argues that the evidence of harassment is admissible as habit evidence under Rule 406 of the Federal Rules of Evidence. The Court declines to admit the evidence as habit under Rule 406 because the unfair prejudice of allowing evidence of harassment to be admitted as habit would substantially outweigh the probative value of that evidence.

9. Request to Exclude Evidence that Defendants Directed Anger or Violence to Other Individuals

Defendants' ninth request seeks to exclude evidence or argument that defendants directed anger or violence to individuals other than plaintiff. Defendants' entire argument for this request is contained in a footnote and incorporates defendants' argument with respect to defendants' eighth request. (Mem. [82] at 12 n.1.) To the extent that plaintiff introduces evidence relating to defendants' anger or violence against other individuals for their failure to engage in sexual acts, that evidence is admissible. Such evidence is relevant to a sexually hostile work environment and demonstrates motive or intent. If, however, the evidence does not relate to individuals refusing the sexual advances or other similar conduct of Andre Chreky, such evidence is inadmissible as irrelevant. Accordingly, defendants' ninth request is GRANTED in part and DENIED in part.

10. Request to Exclude Evidence of the Doudaklian Paternity Suit

Defendants' tenth request seeks to exclude evidence or argument that Andre Chreky was a party to a paternity case filed on behalf of Adele Doudaklian. Plaintiff does not intend to present evidence regarding the Doudaklian paternity case, except for impeachment purposes. In the event plaintiff uses the testimony for impeachment, plaintiff will not state that the information came from the paternity suit. Accordingly, defendants' tenth request is DENIED as moot.

11. Request to Exclude Evidence of Andre Chreky's Alleged Sexual Relationship with his Nieces

Defendants' eleventh request seeks to exclude introduction of evidence or argument that Andre Chreky engaged in an improper sexual relationship with his nieces. Plaintiff has stated that she does not intend to introduce evidence of any improper relationship Andre Chreky may or may not have had with his nieces, unless defendant opens the door to this line of inquiry. (Opp'n [91] at 34 n. 20.) Accordingly, this request is DENIED as moot.

12. Request to Exclude Evidence of Andre Chreky's Sexual Relationships with Other Individuals

Defendants' twelfth request seeks to exclude introduction of evidence or argument that Andre Chreky engaged in or pursued sexual relationships with individuals other than plaintiff, including any rumors of such activity. Andre Chreky's alleged sexual relationships with employees can be separated into two categories: allegations of relations with employees of Piaf's Salon, which he co-owned until 1996, and allegations of relations with employees of Andre Chreky Salon, which he started in 1996 and continues to own and operate.

First, evidence that Andre Chreky engaged in or pursued sexual relationships with employees at Piaf's Salon is inadmissible. The conduct alleged occurred in the early to mid-1990s. Allegations of sexual relationships with employees that took place fifteen years before this complaint was filed and at another salon are irrelevant to plaintiff's case. Moreover, even if the allegations were relevant, the probative value of the allegations is substantially outweighed by the danger of unfair prejudice to Andre Chreky and confusion of the issues because this case concerns plaintiff's allegations of harassment and retaliation at Andre Chreky Salon, not Piaf's Salon.

Second, because plaintiff claims that a hostile work environment existed at defendants' salon, any evidence that Andre Chreky engaged in or pursued sexual relations with other employees of the Andre Chreky Salon is relevant and admissible. Defendant argues that plaintiff's evidence consists of rumors and is therefore inadmissible. (Mem. [82] at 14-15.) Plaintiff's allegations, however, are more than simply allegations of rumors. Indeed, plaintiff alleges that talk of Andre Chreky's sexual exploits were prevalent in the work place and that Andre Chreky often boasted of his own exploits. (Opp'n [92] at 36.) Evidence of such an allegations is relevant and admissible. *See Barclay v. Mercy Health Servs. - Iwoa Corp.*, No. C 07-4074-MWB, 2009 WL 2462296 (N.D. Iowa Aug. 12, 2009) (finding that rampant discussions of defendants' sexual activity in which defendants participated or condoned may be admissible to show a sexually hostile work environment). In addition, plaintiff alleges that defendants gave preferential treatment to those Andre Chreky engaged in sexual relations. (Opp'n [92] at 36.) Such sexual favoritism is evidence of a hostile work environment. *See Broderick*, 685 F. Supp. at 1277 (Citing *King v. Palmer*, 778 F.2d 878, 880 (D.C. Cir. 1985)). Accordingly, defendants'

twelfth request is GRANTED in part and DENIED in part. Plaintiff shall only introduce evidence or argument that Andre Chreky engaged in or pursued sexual relationships with individuals, including discussions of such activity, for the period during which plaintiff was an employee at Andre Chreky Salon.

13. Request to Exclude Evidence that Andre Chreky Caused Physical Injury or Harm to Plaintiff or Her Child in Connection with Her 2005 Pregnancy

Defendants' thirteenth and final request seeks to exclude evidence that defendants caused physical injury or harm to plaintiff or her child in connection with her 2005 pregnancy.

Defendants contend that this evidence is irrelevant because plaintiff does not seek damages for any complications that arose during her pregnancy. (Mem. [82] at 16-17.) Defendants' argument misstates the purpose for which plaintiff seeks to use this evidence. Plaintiff seeks to introduce defendants' treatment of her during her pregnancy in support of her hostile work environment and retaliation claims. (Opp'n [92] at 41-41.) This evidence directly relates to those claims. Accordingly, defendants' thirteenth request is DENIED.

II. Objections to Witnesses

The majority of defendants' objections to plaintiff's witnesses have been addressed in the Court's discussion of defendants' motions *in limine*. Several objections, however, were not addressed in the discussion above. The Court will address these additional objections in turn.

- **Witness 10:** Defendants' objection has been withdrawn.
- **Witness 11:** Defendants' objection has been withdrawn.
- **Witness 29:** Defendants' objection has been withdrawn.

- **Witness 32:** Defendants' objection has been withdrawn.
- **Witness 6:** Defendants object to the use deposition testimony in lieu of live testimony and to the late designation of the witness. Plaintiff indicates that the witness will testify in person and is agreeable to deposing the witness before trial. Accordingly, defendants' objections are overruled. Should the witness fail to appear to testify in person, defendants may renew their objection to the use of deposition testimony in lieu of live testimony.
- **Witness 14:** Defendants object to this witness testifying to "standard tip amounts for colorists, the effect that leaving a salon has on a colorist's clientele base, and the average times it takes to rebuild a clientele base after leaving a salon" because she has not been designated as an expert. Plaintiff argues that she will call the witness as lay witness within the meaning of Rule 701. Plaintiff further contends that the witness will assist the jury understand the economics of working as a stylist in a salon and the impact of stylist moving salons. Defendants' objection is overruled. The witness is qualified to give her opinion as a lay witness under Rule 701.
- **Witness 17:** Defendants object to extensive inquiry into the witness's financial matters and to plaintiff's "alter ego" line of questioning. The parties have reached a stipulation regarding questioning on deductions taken by the witness on his tax returns. Any additional questioning on the witness's financial matters and any questioning relating to the "alter ego" theory must be in conformity with the Court's rulings on defendants' motions *in limine*. Thus, the objection is sustained

in part and overruled in part.

- **Witness 18:** Defendants object to extensive inquiry into the witness's financial matters and to plaintiff's "alter ego" theory. Because these objections are the same as to Witness 17, defendants' objections are sustained in part and overruled in part. Defendants also object to plaintiff's designation of deposition testimony as late. Defendants' objection to these designations as late is overruled.
- **Witness 20:** Defendants object to questioning relating to defendants' net worth. Defendants also object because the questioning will involve an extensive inquiry into defendants' financial matters and will relate to plaintiff's "alter ego" theory. Defendants' objection is overruled in part and sustained in part. The questioning of Witness 20 must conform to the Court's rulings on defendants' motions *in limine*.
- **Witness 21:** Defendants object to the extensive inquiries into defendants' financial matters and plaintiff's "alter ego" theory. Defendants' objection is overruled in part and sustained in part. The questioning of Witness 21 must conform to the Court's rulings on defendants' motions *in limine*.
- **Witness 22:** Defendants object to this witness because her testimony is irrelevant to this case. Plaintiff proffers that the witness will testify on Andre Chreky's conduct at Piaf's Salon. As discussed above, Andre Chreky's conduct at Piaf's Salon is not relevant to this matter. Defendants' objection is sustained.
- **Witness 23:** Defendants object because the witness's testimony is not relevant to this case. Plaintiff proffers that the witness will testify on Andre Chreky's

conduct at Piaf's Salon. As discussed above, Andre Chreky's conduct at Piaf's Salon is not relevant to this matter. Defendants' objection is sustained.

- **Witness 24:** Defendants object to the inclusion of this witness because he was identified late and plaintiff refuses to provide documents generated by the witness. Plaintiff argues that the witness is private investigator who will testify about Andre Chreky's sexual encounters with an employee. This testimony is relevant to the issue of whether Andre Chreky engaged in sexual relationships with his employees. The objection is overruled.
- **Witness 25:** Defendants object to the inclusion of this witness because he was identified late and plaintiff refuses to provide documents generated by the witness. Plaintiff argues that the witness is private investigator who will testify about Andre Chreky's sexual encounters with an employee. This testimony is relevant to the issue of whether Andre Chreky engaged in sexual relationships with his employees. The objection is overruled.
- **Witness 31:** Defendants object to this witness because he was not identified until January 6, 2010. Plaintiff argues that defendants had notice that this witness had discoverable information. Plaintiff proffers that the witness will testify about false statements Andre Chreky and his wife made to investigators during a license investigation. As discussed above, this testimony is relevant to demonstrate defendants' intent under Rule 404(b). The testimony also sheds light on defendants' character for truthfulness. Accordingly, the objection is overruled.

III. Conclusion

As set forth above, plaintiff's motions *in limine* are DENIED as moot, defendants' motions *in limine* are GRANTED in part and DENIED in part, and defendants' objections to plaintiff's witness list have been ruled upon. Counsel shall call the witnesses and produce evidence as indicated in their pretrial statement in accordance with this order. Trial will commence as scheduled on February 16, 2010, at 10:00 A.M.

SO ORDERED.

Signed by Royce C. Lamberth, Chief Judge, on February 2, 2010.