**UNITED STATES DISTRICT COURT**
**SOUTHERN DISTRICT OF FLORIDA**

**Case No. 08-80736-Civ-Marra/Johnson**

**JANE DOES #1 and #2**

[redacted].

**UNITED STATES**
_____/

**JANE DOE #1 AND JANE DOE #2'S STATUS REPORT AND RESPONSE TO COURT'S ORDER TO SHOW LACK OF PROSECUTION**

Jane Doe #1 and Jane Doe #2 ("the victims"), through counsel, file the response to Court's order to file a status report and show cause regarding prosecution of the case (DE 40).

**BACKGROUND**

As the Court is aware, it entered an order administratively closing this case on September 9, 2010 (DE 38). That order recited the fact that Jane Doe #1 and Jane Doe #2 had recently settled their civil cases *with Jeffrey Epstein* as the basis for closure. On September 13, 2010, the victims promptly filed a notice that, while they had settled their case with Jeffrey Epstein, they had reached no settlement *with the U.S. Attorney's Office* and intended to make filings in this case shortly (DE #39). The victims requested administrative reopening of the case and, if the Court deemed it advisable, a prompt scheduling conference with the U.S. Attorney's Office regarding the case. The victims also advised that they had only recently received important correspondence between the U.S. Attorney's Office and Epstein proving that there had been an orchestrated decision to deny them their rights.

On October 8, 2010, the Court entered an order directing the victims to file a status report and show cause why the case should not be dismissed for want of prosecution.

**STATUS REPORT**

As the Court is aware from the victims' filing on September 13, 2010 (DE 39), the victims have now received important evidence that allows them to file a comprehensive motion explaining the factual background underlying the denials of their rights under the Crime Victims Rights Act and the legal reasons for concluding that their rights under the Act have been violated. Over the last several weeks, the victims have prepared a full motion to that effect – accompanied by a detailed factual and legal memorandum. They planned to file the motion and memorandum today, simultaneously with this pleading. The motion they have fully prepared is in the nature of summary judgment motion (with a proposed set of undisputed facts), although the exact procedures for CVRA cases are unclear.

In an effort to narrow and resolve disputes in this case, the victims had previously notified the U.S. Attorney's Office that it was going to be filing such a motion and accompanying statement of facts. They had requested the U.S. Attorney's Office review the facts and identify which ones were disputed. On October 22, 2010, the U.S. Attorney's Office responded with an e-mail: "The government will review your statement of facts and we will agree to a factual assertion if we believe it is correct." On October 23, 2010, the victims e-mailed to the U.S. Attorney's Office a detailed proposed statement of facts, with many of the facts documented by correspondence between the U.S. Attorney's Office and Epstein's counsel. The victims requested that the U.S. Attorney's Office identify which facts it would agree to and which it would not. In a letter to the U.S. Attorney's Office, the victims stated:

> If you believe that any of the facts they propose are incorrect, Jane Doe #1 and Jane Doe #2 would reiterate their long-standing request that you work with us to arrive at a mutually-agreed statement of facts. As you know, in the summer of 2008 Jane Doe #1 and Jane Doe #2 were working with you on a stipulation of facts when you reversed course and took that position that no recitation of the facts was necessary (*see* doc. #19 at 2). In particular, on July 29, 2008, you filed

> a Notice to Court Regarding Absence of Need for Evidentiary Hearing (DE. 17). At that time, you took the position that, because no federal criminal charges had been filed in the Southern District of Florida, no additional evidence was required to decide the victims' petition that was before the Court. I hope that your e-mail means that you will at least look at our facts and propose any modifications that you deem appropriate. Having that evidence quickly available to the Court could well help move this case to a conclusion.
>
> As you also know, because of the Government's decision not to work with us on agreed facts, we have had to secure information regarding the basis for your Office's treatment of the victims from other sources. This has been an arduous process, since the only remaining source for much of the information was Jeffrey Epstein. As you know, he is a politically-connected billionaire that employs legions of attorneys to obstruct any efforts to obtain information from him. Fortunately, after extended litigation, on June 30, 2010, we obtained information from him that was highly relevant to the treatment of Jane Doe #1 and Jane Doe #2 in the criminal justice system – namely, correspondence between your Office and legal counsel for Jeffrey Epstein during the negotiations surrounding the non-prosecution agreement. Many of our "facts" come straight from these e-mails. I trust that you will agree that our recitations of the e-mails are correct and that they accurately reflect communications between your Office and Epstein's legal counsel during the plea negotiation process.

That same day, the U.S. Attorney's Office agreed to forward the proposed statement of facts to the appropriate Assistant U.S. Attorney for review.

On October 26, 2010, rather than stipulate to undisputed facts, the U.S. Attorney's Office contacted the victims' attorneys and asked them to delay the filing of their motion for a two-week period of time so that negotiations could be held between the Office and the victims in an attempt to narrow the range of disputes in the case and to hopefully reach a settlement resolution without the need for further litigation. Negotiations between the victims and the U.S. Attorney's Office then followed over the next two days. However, at 6:11 p.m. on October 27, 2010 – the date on which this pleading is due – the U.S. Attorney's Office informed the victims that it did not believe that it had time to review the victims' proposed statement of facts and advise which were accurate and which were inaccurate. The Office further advised the victims that it believed that the victims did not have a right to confer with their Office under the CVRA in this case

because in its view the case is "civil" litigation rather than the criminal litigation. The Office, however, indicated it was willing to nonetheless meet with the victims.

Purely as an accommodation to the U.S. Attorney's Office, the victims have therefore agreed to delay filing their motion for up to two-weeks to see if negotiations can resolve (or narrow) the disputes with the U.S. Attorney's Office. The U.S. Attorney's Office has represented that settlement discussions would be more difficult if the victims filed their motion today. The victims, however, have requested that the U.S. Attorney's Office immediately begin preparing their response to the motion so that it can file a response without any further delay. The victims also further state that they reserve the right to immediately file their motion and memorandum as soon as they believe that further negotiations are not productive.

If no resolution of the case is achieved in the next two weeks – and if the Court does not direct a more expedited schedule in the meantime[1] -- the victims would propose the following schedule for bringing this case to a conclusion:

**November 10, 2010** (or earlier if directed by the Court or decided by the victims) – Victims file their comprehensive motion and supporting memorandum.
**November 24, 2010** -- U.S. Attorney's Office files response to the victims' motion.
**December 3, 2010** – Victims' file Reply to the U.S. Attorney's Response.
Evidentiary Hearing (if facts contested) – early December, at a time convenient to the Court.
**January 1, 2011** – Court issues ruling on whether victims' rights were violated.

If the Court enters a finding that the victims' rights were violated, then ….

**January 14, 2011** – Victims brief on the appropriate remedy for a violation;

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[1] The victims understand the Court's show cause order to require them to file today a pleading explaining the status of the case and showing why the case should not be dismissed for failure to prosecute – not a comprehensive motion for resolution of all claims. If the victims are mistaken and the Court is directing that they file a comprehensive motion by today's date, the victims would respectfully ask leave to promptly make such a filing on any date the Court may direct. The victims would note that the U.S. Attorney's Office has also indicated its understanding that no such comprehensive motion need be filed by the victims today to comply with the Court's order.

**January 28, 2011** -- U.S. Attorney's Office (and any other interested person) files response to victims' remedy brief.
**February 4, 2011** – Victims reply on remedy issues.
Hearing if necessary – mid-February, at a time convenient to the Court.

This proposed schedule would allow Jane Doe #1 and Jane Doe #2 to have their case fully resolved on the merits within the next few months. The victims would have no objection to the Court accelerating the schedule. The victims understand that the U.S. Attorney's Office would like a slower schedule to resolve this matter – specifically 30 days for them to file a response.

**THE CASE SHOULD NOT BE DISMISSED FOR LACK OF PROSECUTION**

Jane Doe #1 and Jane Doe #2 should not have their case dismissed for lack of prosecution for the simple reason that they have not failed to prosecute it. To the contrary, as will be recounted more fully in the statement of facts contained in their motion for a finding of violation of their rights, they have been attempting to secure information that would help prove their case. (If the Court wishes, the victims are prepared to file immediately more information on this point.)

Although the victims will rely on all of the information contained in the statement of facts that they are preparing to file, in the interest of a brief summary the victims would note that they have been diligently attempting to secure correspondence between Epstein and the U.S. Attorney's Office regarding the non-prosecution agreement reached in this case. After the U.S. Attorney's Office declined to provide the information, the victims sought to secure that information as part of their civil lawsuits against Epstein. Because of protracted litigation from Epstein's battery of lawyers, the victims did not secure any of the correspondence they sought until June 30, 2010. Even then, they secured only part of that correspondence – litigation to secure the rest of that correspondence continues to this day.

The victims have also never been asked by the U.S. Attorney's Office to accelerate the resolution of this case. During the last year, the victims' counsel have been in contact with the U.S. Attorney's Office on numerous matters related to Jeffrey Epstein, including contacts with Assistant U.S. Attorneys [redacted] – the two attorneys who appear to be handling this CVRA matter for the U.S. Attorney's Office. At no time did anyone in the U.S. Attorney's Office ask the victims to begin moving more quickly to resolve this case. Counsel for the U.S. Attorney's Office have never contacted the victims about any problems that any delay was causing. During the last two days, the victims have asked the U.S. Attorney's Office whether they have been prejudiced by the passage of time in this case. The U.S. Attorney's Office has declined to explain how (if at all) it has been prejudiced.

The victims would also note that the Court has never advised them of a deadline for moving forward with their CVRA case. The victims also knew that the Court was aware of the intense and protracted litigation what was proceeding with Epstein in the various civil cases against him. It seemed reasonable to the victim to resolve those cases first and then turn to the CVRA case – and the victims assumed that the Court was also proceeding on this approach, as the victims never received any inquiry from the Court about their CVRA case until the September 2010 order "administratively" closing the case. Within 5 days of receiving that communication from the Court, the victims promptly advised the Court of their intent to continue moving forward with the case and suggesting a scheduling conference if the Court deemed it advisable.

The victims have now proposed a specific schedule that will bring this matter to a final conclusion in the next few months. In fact, the victims feel their case is strong and were prepared to file the equivalent of a Summary Judgment Motion today and only delayed that filing

at the insistence of the U.S. Attorney's Office. There is no reason to dismiss the case precipitously now on the eve of a final resolution.

The Eleventh Circuit has repeatedly noted that dismissal with prejudice is an "extreme sanction" and "is plainly improper unless and until the district court finds a clear record of delay or willful conduct and that lesser sanctions are inadequate to correct such conduct." *Betty K Agencies, Ltd. v. M[redacted] MONADA,* 432 F.3d 1333, 1338-39 (11th Cir.2005). In this case, there is no clear record of delay or willful conduct. To the contrary, there is a pattern of the victims diligently attempting to secure evidence (i.e., the correspondence) vital to their case in the face of determined opposition from both the U.S. Attorney's Office and a billionaire sex offender represented by a battery of attorneys. The Eleventh Circuit has held that simple negligence in meeting a court-imposed deadline is not sufficient to warrant dismissal. *See McKelvey v. AT & T Techs., Inc.,* 789 F.2d 1518, 1520 (11th Cir.1986) (per curiam). Here, there is not even negligence, as the victims have not failed to meet any deadline that the Court has set.

In addition, the victims today stand ready to bring the case to an expeditious conclusion on the schedule they propose. On September 13, 2010, the victims also suggested to the Court that a scheduling conference would be one way to proceed in this case – a suggestion that they continue to offer to the Court. The Government – the other party in the case – has asked the victims to move more slowly on this matter and has (as of yet) declined to indicate which facts it is disputing in this case and which facts it is stipulating to. The victims continue to actively participate in on-going settlement negotiations with the U.S. Attorney's office to resolve this case, and should those negotiations break down, then the victims are prepared to litigate the issues raised in this action on an expedited schedule. In view of these circumstances, there is no basis for dismissing the case.

**CONCLUSION**

The Court should establish the schedule proposed by the victims and bring this case to a conclusion on the merits as the victims propose.

DATED: October 27, 2010

Respectfully Submitted,

[redacted]

*and*

[redacted]

Attorneys for Jane Doe #1 and Jane Doe #2

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on October 27, 2010 I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all parties on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those parties who are not authorized to receive electronically filed Notices of Electronic Filing.

*/s/ Bradley J. Edwards*
Bradley J. Edwards

## SERVICE LIST

**Jane Does 1 and 2 [redacted]. United States**
**United States District Court, Southern District of Florida**
**Case No. 08-80736-CIV-MARRA/JOHNSON**

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