IN THE CIRCUIT COURT OF THE
SEVENTEENTH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY, FLORIDA

CASE NO.: CACE 15-000072

EDWARDS, *et al.*,

Plaintiffs / Counterclaim Defendants,

v.

DERSHOWITZ,

Defendant / Counterclaim Plaintiff.
_____/

DEFENDANT / COUNTERCLAIM PLAINTIFF ALAN DERSHOWITZ'S MEMROANDUM IN OPPOSITION TO JANE DOE NO. 3'S MOTION TO QUASH OR FOR PROTECTIVE ORDER

Defendant / Counterclaim Plaintiff Alan Dershowitz ("Dershowitz") respectfully submits this Memorandum in Opposition to the Motion to Quash or for Protective Order Regarding Subpoena filed by non-party Jane Doe No. 3 (the "Motion to Quash").

INTRODUCTION

The Motion to Quash presents Jane Doe No. 3 as though she were a minor who is being unwillingly dragged into a dispute not of her making and who would prefer to avoid public attention.[1] Nothing could be further from the truth.

This case began when Jane Doe No. 3 and her lawyers, Bradley J. Edwards ("Edwards") and Paul G. Cassell ("Cassell"), made a deliberate decision to file a pleading in a federal lawsuit accusing Dershowitz of committing a heinous crime: sexually abusing a minor. Jane Doe No. 3

[1] Jane Doe No. 3 has no right to proceed anonymously as she has been identified publicly on several occasions and has made public statements using her own name, as indicated by the exhibits that she submitted with the Motion to Quash. *See* Motion to Quash, Ex. 1-4. Nonetheless, Dershowitz will use "Jane Doe No. 3" to refer to her until the Court orders otherwise.

and her attorneys made these allegations in public court pleadings and declarations, hoping to hide behind the litigation privilege to prevent Dershowitz from being able to hold them accountable for their false statements.

Jane Doe No. 3's outrageous allegations were obviously intended to generate publicity for herself and her lawyers, not to advance any legitimate interest. The allegations had absolutely no relevance whatsoever to the lawsuit in which the pleadings and declarations were filed and gratuitously included the names of prominent people, including Prince Andrew. That the allegations were improper and irresponsible is not merely an assertion by Dershowitz; United States District Judge Marra has expressly held that the "lurid" allegations were "unnecessary," "immaterial," and "impertinent" to the federal lawsuit. *See* Exhibit A. Judge Marra ordered the allegations stricken from the record, and reminded Edwards and Cassell of their obligations under Rule 11 of the Federal Rules of Civil Procedure, which prohibits filings made for an improper purpose.

As Edwards, Cassell and Jane No. 3 undoubtedly expected and intended, their "unnecessary," "immaterial" and "impertinent" allegations resulted in a firestorm of publicity about Dershowitz's alleged misconduct. With Edwards, Cassell, and Jane Doe No. 3 seeking to hide behind the litigation privilege, Dershowitz responded as best he could by telling the press repeatedly and forcefully that Jane Doe No. 3's allegations about him are completely and categorically false. Dershowitz also asserted that Edwards and Cassell knew the allegations were false or would have known they were false if they had done even minimal investigation into Jane Doe No. 3's story.

Edwards and Cassell then filed this action, alleging that Dershowitz committed the tort of defamation in making these statements to the media. To prevail on their defamation claim and

defeat Dershowitz's affirmative defenses, Edwards and Cassell must substantiate their allegation that Dershowitz made the statements to the media even though he "knew [the filing containing Jane Doe No. 3's outrageous allegations was] an entirely proper and well-founded pleading." *See* Exhibit A, Compl. ¶ 17. The testimony of Jane Doe No. 3 and the documents requested in the subpoena are at the very heart of this issue, which Edwards and Cassell have placed squarely in dispute. There simply is no basis for crediting Jane Doe's assertions of "irrelevance."

Jane Doe No. 3's alternative argument – that she should be shielded from any discovery in this action because Dershowitz is "abusing" the subpoena power by seeking information that is "highly personal" and "confidential" – is likewise unavailing. As an adult, Jane Doe No. 3 has voluntarily submitted multiple sworn declarations and has given numerous media interviews in which she has detailed, at length, the very same events that she is now contending are "highly personal." Had Jane Doe No. 3 truly been concerned for her privacy, she could have refrained from giving any media interviews and avoided rather than sought publicity. As to the federal lawsuit, Judge Marra has already held that the allegations against Dershowitz (and Prince Andrew) should never have been included in Jane Doe No. 3's pleadings at all. And, even if those allegations had some legitimate purpose, which Judge Marra held they did not, Jane Doe No. 3 and her lawyers could have made them in a sealed pleading. Instead, Jane Doe No. 3 (with Plaintiffs' assistance) made these accusations in the most public manner possible – she sought out the limelight rather than hiding from it. In light of these deliberate choices by Jane Doe No. 3, and considering the issues in dispute in this action, Dershowitz's need for the requested documents and testimony clearly outweighs any "privacy" interests that Jane Doe No. 3 could conceivably assert.

The subpoena is not a fishing expedition, nor does it represent any sort of abuse of the discovery process. Jane Doe No. 3, along with Plaintiffs, set off the chain of events that led to the filing of this lawsuit by making false and gratuitous allegations against Dershowitz. She must be compelled to submit to questioning about those scurrilous allegations, which are the crux of the claims and defenses at issue in this defamation action. Like any witness, she is entitled to be treated with dignity and respect during the discovery process, and will be so treated by Dershowitz's counsel. But the notion that she is entitled to extraordinary protections, and to be excused from producing evidence that is central to this case, is frivolous.

For these reasons and as explained in detail below, the Court should deny the Motion to Quash and reject Jane Doe No. 3's request for a protective order that imposes limitations on the subpoena.

FACTUAL BACKGROUND

This defamation action arises out of an underlying lawsuit that Edwards and Cassell filed against the United States (the "Government") in the United States District Court for the Southern District of Florida (the "Federal Action") more than eight years ago. In the Federal Action, Edwards and Cassell represent certain alleged victims of Jeffrey Epstein, a client of Dershowitz's, who contend that the Government violated their rights under the Crime Victims Rights Act (the "CVRA"). Specifically, the two alleged victims – known as "Jane Doe No. 1" and "Jane Doe No. 2" – assert that the Government violated their rights under the CVRA by failing to consult with them before negotiating a non-prosecution agreement (the "NPA") with Epstein, who allegedly subjected them to various sexual crimes when they were minors.

On December 30, 2014 – more than eight years after the Federal Action began – Edwards and Cassell filed a motion to allow a third alleged victim, Jane Doe No. 3, to join in the suit as an

additional plaintiff (the "Joinder Motion"). *See* Exhibit B. The Joinder Motion alleges that Jane Doe No. 3 first met Epstein in 1999 and that Epstein "kept Jane Doe #3 as his sex slave from about 1999 through 2002, when she managed to escape to a foreign country." *Id.* at 4. The Joinder Motion alleges that "Epstein also sexually trafficked the then-minor Jane Doe [No. 3], making her available for sex to politically-connected and financially-power people." *Id.* The Joinder Motion then states as follows:

> One such powerful individual that Epstein forced then-minor Jane Doe #3 to have sexual relations with was former Harvard Law Professor Alan Dershowitz, a close friend of Epstein's and well-known criminal defense attorney. Epstein required Jane Doe #3 to have sexual relations with Dershowitz on numerous occasions while she was a minor, not only in Florida but also on private planes, in New York, New Mexico, and the U.S. Virgin Islands. In addition to being a participant in the abuse of Jane Doe #3 and other minors, Dershowitz was an eye-witness to the sexual abuse of many other minors by Epstein and several of Epstein's co-conspirators. Dershowitz would later play a significant role in negotiating the NPA on Epstein's behalf. Indeed, Dershowitz helped negotiate an agreement that provided immunity from federal prosecution in the Southern District of Florida not only to Epstein, but also to "any potential coconspirators of Epstein." NPA at 5. Thus, Dershowitz helped negotiate an agreement with a provision that provided protection for himself against criminal prosecution in Florida for sexually abusing Jane Doe #3. Because this broad immunity would have been controversial if disclosed, Dershowitz (along with other members of Epstein's defense team) and the Government tried to keep the immunity provision secret from all of Epstein's victims and the general public, even though such secrecy violated the Crime Victims' Rights Act.

Id. The Joinder Motion included similar public allegations against Prince Andrew. Edwards and Cassell filed the Joinder Motion on the public docket in the Federal Action, without any accompanying motion to seal.

The Joinder Motion marked the first time that Jane Doe No. 3 (either directly or through her attorneys) publicly asserted any sort of allegations of misconduct against Dershowitz. Yet, the Federal Action is *not* the first forum in which Jane Doe No. 3 has made public statements about her interactions with Epstein as a minor. In 2011, Jane Doe No. 3 gave an extensive

interview to the *Daily Mail*, a British tabloid publication, during which she "agreed to waive her anonymity" and provided a number of specific details about her alleged abuse at the hands of Epstein. *See* Exhibit C. For example, the *Daily Mail* quotes Jane Doe No. 3 as stating that "I was training to be a prostitute for [Epstein] and his friends who shared his interest in young girls. After about two years, he started to ask me to 'entertain' his friends." *Id.* According to the *Daily Mail*, Jane Doe No. 3 was very descriptive during her interview about her time with Epstein. Indeed, Jane Doe No. 3 statedthat she was "telling [the news publication] things that even my husband doesn't know." *Id.* The tabloid newspaper specifically noted that "for reasons of taste, not all the details [provided by Jane Doe No. 3] can be included here." *Id.*

Jane Doe No. 3 used a similar level of detail in the two sworn declarations she submitted in the Federal Action following the filing of the Joinder Motion. *See* Exhibit D, Declaration of Jane Doe No. 3 (Jan. 21, 2015); Exhibit E, Declaration of Jane Doe No. 3 (Feb. 5, 2015). The declarations – each of which consisted of more than 60 separate paragraphs – provided many details about Jane Doe No. 3's time with Epstein and how her "only purpose . . . was to be used for sex." Exhibit D, ¶ 15. The first declaration actually included multiple photographs purportedly of Jane Doe No. 3 as a minor, including one of Jane Doe No. 3 and Prince Andrew. *Id.* ¶ 32. With respect to Dershowitz, Jane Doe No. 3's first declaration provided gratuitous (and false) details about six specific instances in which Jane Doe No. 3 purportedly had sexual intercourse with Dershowitz. *Id.* ¶¶ 24-31. Jane Doe No. 3 also averred that "Dershowitz was so comfortable with the sex that was going on that he would even come and chat with Epstein while I was giving oral sex to Epstein." *Id.* ¶ 24. As with the Joinder Motion, Edwards and Cassell filed Jane Doe No. 3's declarations on the public docket in the Federal Action without any effort to seal the contents of the documents.

In response to the false and outrageous allegations asserted against him in the Federal Action and the subsequent media coverage of those allegations, Dershowitz made a number of public statements defending his previously unblemished personal and professional reputations. Edwards and Cassell then filed this action, alleging that Dershowitz defamed them by "initiat[ing] a massive public media assault on the reputation and character of [Edwards] and [Cassell] accusing them of intentionally lying in their filing, of having leveled knowingly false accusations against [Dershowitz] without ever conducting any investigation of the credibility of the accusations and of having acted unethically to the extent that their willful misconduct warranted and required disbarment" – even though Dershowitz "knew [the Joinder Motion] to be an entirely proper and well-founded pleading." Exhibit A, Compl. ¶ 17.

Pursuant to the stipulated order entered by this Court on March 20, 2015 that appointed a Commissioner in the State of Colorado, Dershowitz served a subpoena for the production of documents and a videotaped deposition on Jane Doe No. 3. *See* Exhibit G.[2] The subpoena seeks, among other things: (1) documents supporting Jane Doe No. 3's allegations about Dershowitz in the Federal Action; (2) photographs and video of Jane Doe No. 3 with Dershowitz; (3) photographs, videos and documents establishing that Jane Doe No. 3 was in the six locations identified in her declaration at the same time that Dershowitz also was in those six locations; (4) statements provided by, and notes from interviews given by, Jane Doe No. 3

[2] Plaintiffs refused to accept service of the subpoena on behalf of Jane Doe No. 3, even though they represent her in connection with the Federal Action. Plaintiffs referred Dershowitz to the law firm of Boies, Schiller & Flexner LLP, which is representing Jane Doe No. 3 for purposes of this action. Boies, Schiller & Flexner likewise declined to accept service on behalf of Jane Doe No. 3, which forced Dershowitz to seek the issuance of the subpoena through the commission process and ultimately to effect service on Jane Doe No. 3 in Colorado. After all that, Jane Doe No. 3's lawyers asked Dershowitz to consent to having this Court resolve the discovery dispute and for her deposition to be in Florida, which Dershowitz did. Jane Doe No. 3's depostion and production of documents have been delayed by this unnecessary and inappropriate runaround.

referencing Dershowitz by name; (5) travel records, cell phone records, and diaries from the time period when Jane Doe No. 3 has proclaimed she was kept as a "sex slave" by Epstein; (6) drafts of any of Jane Doe No. 3's declarations referencing Dershowitz by name; and (7) documents concerning any actual or potential book, television or movie deals concerning Jane Doe No. 3's allegations about being a "sex slave." *Id.*

On April 7, 2015, Judge Marra issued an order in the Federal Action striking the portions of the Joinder Motion and Jane Doe No. 3's declarations referring to Dershowitz. *See* Exhibit H. The court concluded that the "lurid details" included in the Joinder Motion by Edwards and Cassell on behalf of Jane Doe No. 3 are "immaterial and impertinent" to the issues in dispute in the Federal Action, and were "unnecessary" to resolving the Federal Action. In a supplemental order also issued on April 7, 2015, Judge Marra ordered that the filings containing the stricken materials be restricted from public access. *See* Exhibit I.

On April 9, 2015, Jane Doe No. 3 served objections to the subpoena *duces tecum* and filed a motion to quash the subpoena in its entirety or, in the alternative, for a protective order limiting the scope of the deposition and the documents she is required to produce. The parties have since agreed that Jane Doe No. 3's motion to quash and objections should be decided by this Court. The parties have also agreed that, if the Court declines to quash the subpoena in its entirety, the deposition of Jane Doe No. 3 will take place in Florida.

MEMORANDUM OF LAW

I. The documents and testimony that Dershowitz seeks from Jane Doe No. 3 are directly relevant to this defamation action.

The thrust of Jane Doe No. 3's motion to quash is that Dershowitz is improperly using the defamation action to obtain backdoor discovery relating to the "different" matters at issue in the Federal Action. *See* Motion to Quash, at 8. In reality, however, the subpoena served on Jane

Doe #3 seeks documents and testimony that are at the very crux of this action, as framed by Plaintiffs' own complaint.

Under Rule 1.280 of the Florida Rules of Civil Procedure, "[p]arties may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter of the pending action, whether it relates to the claim or defense of the party seeking discovery or the claim or defense of any other party." Put differently, information is discoverable so long as it relates "to the issues involved in the litigation, as framed in all pleadings." *Diaz-Verson v. Walbridge Aldinger Co.*, 54 So. 3d 1007, 1011 (Fla. 2d DCA 2010); *see also Richard Mulholland & Assocs. v. Polverari*, 698 So. 2d 1269, 1270 (Fla. 2d DCA 1997) (explaining that a protective order is required only "when the pleadings indicate that the documents requested are not related to any pending claim or defense").

Jane Doe No. 3 contends that she should not have to testify or produce any documents in this case because the allegedly defamatory statements at issue "are statements about [Plaintiffs'] character as lawyers and do not directly involve non-party Jane Doe No. 3." Motion to Quash, at 3. This is simply wrong. The complaint expressly alleges that Dershowitz committed the tort of defamation by accusing Edwards and Cassell of having acted improperly by filing the Joinder Motion, even though Dershowitz "knew [the Joinder Motion] to be an entirely proper and well-founded pleading." Ex. A, Comp. ¶ 17. Thus, the face of the complaint alleges that Jane Doe No. 3's allegations were "well-founded" and establishes that this case *does* directly involve Jane Doe No. 3 and the credibility of her accusations against Dershowitz.

The relevance of Jane Doe No. 3's testimony and documents becomes even more apparent after considering what Plaintiffs must prove to prevail on their defamation claim and defeat Dershowitz's affirmative defenses. Under Florida law, a defamation plaintiff must

establish the following elements: (1) publication; (2) falsity; (3) actor must act with knowledge or reckless disregard as to the falsity on a matter concerning a public official, or at least negligently on a matter concerning a private person; (4) actual damages; and (5) statement must be defamatory. *Jews For Jesus, Inc. v. Rapp*, 997 So. 2d 1098, 1106 (Fla. 2008). Because Edwards and Cassell are public figures or limited public figures, they must also prove that Dershowitz acted with actual malice in making his statements, *i.e.*, that Dershowitz "knew [the Joinder Motion] to be an entirely proper and well-founded pleading." Ex. A, Comp. ¶ 17.

Testing this allegation requires discovery into the credibility of Jane Doe No. 3's accusations against Dershowitz; whether those allegations are true or false go directly to whether Dershowtiz was properly defending his reputation or acting maliciously by denying allegations he knew to be true. The subpoena served on Jane Doe No. 3 is intended to accomplish precisely that goal. For example, the subpoena seeks "[a]ll documents that reference by name, Alan M. Dershowitz, which support and/or confirm the allegations set forth in" Jane Doe No. 3's declarations submitted in the Federal Action, as well as "[a]ny documents and information that support and/or confirm [Jane Doe No. 3's] presence at the various locations named in [Jane Doe No. 3's declaration] on the particular dates and times when [Dershowitz] was also present." Similarly, the subpoena seeks Jane Doe No. 3's diaries, cell phone records and travel records during the time she asserts she was kept as Epstein's "sex slave," *i.e.*, 1999 to 2002 – all of which could contain information that undermines or contradicts her allegations about when and where she allegedly had sex with Dershowitz (and that likewise disproves Plaintiffs' allegation that Dershowitz knew the Joinder Motion was a "well-founded pleading").

The subpoena also requests documents that go to Jane Doe No. 3's general credibility – an issue that is directly relevant both to the truth of Jane Doe No. 3's allegations against

Dershowitz and whether Dershowitz knew the Joinder Motion to be "well-founded." For example, Jane Doe No. 3 has made statements to the media about meeting former President Clinton and former Vice President Gore on Epstein's private island in the Caribbean. Dershowitz is entitled to explore the veracity of Jane Doe No. 3's accounts of these meetings, because any inconsistencies are obviously relevant to Jane Doe No. 3's credibility as a witness. Dershowitz expects the evidence to show that Jane Doe No. 3's accounts of her alleged interactions with President Clinton and Vice President Gore are complete fabrications, just like her allegations against Dershowitz. Similarly, Dershowitz has a right to explore Jane Doe No. 3's potential book, movie, and television deals as a means of establishing her bias, as well as the potential bias by Edwards and Cassell (*i.e.*, whether the lawyers had a financial incentive to help sensationalize Jane Doe No. 3's story by identifying Dershowitz by name in a public pleading). *See Steinger, Iscoe & Greene, [redacted] v. GEICO Gen. Ins. Co.*, 103 So. 3d 200, 203 (Fla. 4th DCA 2012) (discovery aimed at obtaining evidence of a witness's bias is permissible).

The cases relied upon by Jane Doe No. 3 in support of her relevance argument are inapposite because they involved attempts to obtain information that had no "possible relevance" to the issues in dispute. For example, in *Calvo v. Calvo*, 489 So. 2d 833, 834 (Fla. 3d DCA 1986), the Third District held that an ex-wife's financial records had no "possible relevance" to her post-judgment action seeking to compel payments that the ex-husband owed under a previously entered final judgment dissolving their marriage. In *Toledo v. Publix Super Markets, Inc.*, 30 So. 3d 712 (Fla. 4th DCA 2010), the Fourth District held that a party cannot issue an indiscriminate request to the attorney of a non-party seeking the attorney's entire client file in an unrelated litigation, absent some showing of how specific documents in that file might possibly be relevant. Here, by contrast, Dershowitz is seeking specific types of information from Jane

Doe No. 3 and has established how that information is directly relevant to this defamation action, as framed by the operative pleadings in this case. The subpoena issued to Jane Doe No. 3 is in no way, shape, or form a fishing expedition.

II. Jane Doe No. 3's "confidentiality" and "privacy" assertions cannot excuse her from testifying or producing documents given her repeated public statements about these issues.

Jane Doe No. 3 also attempts to use "confidentiality" as a shield to protect her from having to participate whatsoever in discovery. Specifically, Jane Doe No. 3 argues that it would be "oppressive and unreasonable" to force her to provide any testimony or documents about her time with Epstein because that topic is "highly personal and sensitive." *See* Motion to Quash, at 4. Jane Doe No. 3 therefore asks the Court to quash the subpoena in its entirety so that she is not "forc[ed]" to testify about her experiences at the hands of Epstein. *Id.*

Jane Doe No. 3's assertions of "privacy" and "confidentiality" are untenable. Jane Doe No. 3 has made public, detailed statements about her interactions with Epstein, as well as her purported encounters with Dershowitz during her self-described time as Epstein's "sex slave." Jane Doe No. 3 has even given lengthy interviews describing her experiences as a "sex slave" in such detail that not even a tabloid newspaper was willing to print all of the remarks she voluntarily made about her alleged experiences. *See, e.g.*, Exhibit C. Edwards and Cassell have also submitted numerous unsealed pleadings and declarations on behalf of Jane Doe No. 3 in the Federal Action that were available to the public (until Judge Marra appropriately struck those filings from the record as being lurid and impertinent). Jane Doe No. 3 made all of these voluntary statements as an adult, many years after she allegedly "escaped" from Epstein. She can hardly now say that such matters are so "personal" or "private" as to warrant an order from the Court that excuses her from testifying about facts within her personal knowledge.

"When confidential information is sought from a non-party, the trial court must determine whether the requesting party establishes a need for the information that outweighs the privacy rights of the non-party." *Westco, Inc. v. Scott Lewis' Gardening & Trimming, Inc*., 26 So.3d 620, 622 (Fla. 4th DCA 2009). Assuming that the testimony and information sought in the subpoena is, in fact, "confidential" – a conclusion that is far from clear given Jane Doe No. 3's penchant for discussing that information in the most public of ways, presumably for financial gain – Dershowitz has indisputably met his burden of establishing a need for that information. Dershowitz has no way to test the essential elements of Plaintiffs' defamation claim or certain of his affirmative defenses without questioning Jane Doe No. 3 about her false and outrageous allegations against him.

For this reason, Jane Doe No. 3's reliance on *Peisach v. Antuna*, 539 So. 2d 544, 547 (Fla. 3d DCA 1989), is misplaced. In *Peisach*, the Third District held that an ex-husband in a post-divorce custody dispute was not entitled to depose his ex-wife's gynecologists because (1) those physicians were unlikely to have information about the ex-wife's migraine headaches, which was the specific condition the ex-husband contended interfered with the ex-wife's ability to care for the children; and (2) the ex-husband was already deposing the wife's neurologist, who was "far more likely to shed light on the subject of migraine headaches than any testimony from a gynecologist." Unlike in *Peisach*, there are no obvious alternative avenues to pursue to test the veracity of Jane Doe No. 3's allegations against Dershowitz.

In sum, there is no sound basis for excusing Jane Doe No. 3 from having to testify or produce documents in this action. Jane Doe No. 3, along with her lawyers, set in motion the events that led to this defamation action, and she should be compelled to submit to questioning

and document production in accordance with Florida's broad parameters for discovery and pursuant to fundamental principles of fairness.

III. Jane Doe No. 3's requested limitations on the subpoena *duces tecum* are unfounded and should be denied.

Jane Doe No. 3 alternatively argues that, if the Court does not quash the subpoena in its entirety, the Court should limit the scope of her document production. According to Jane Doe No. 3, the requests can be grouped into four objectionable categories: (1) documents that contain highly personal and sensitive information; (2) documents unrelated to this action; (3) documents that contain personal financial or other confidential information; and (4) "plainly privileged" communications between Jane Doe No. 3 and her lawyers. None of Jane Doe No. 3's objections have merit, and the Court should reject her request for a protective order.

First, Jane Doe No. 3's arguments with respect to Categories 1 and 3 fail for the reasons discussed above. Having publicly and repeatedly discussed her experiences as a minor with Epstein (and allegedly with Dershowitz) – including to the point of volunteering details that not even a tabloid would publish – Jane Doe No. 3 can hardly claim these issues are confidential or private. In any event, Dershowitz has established that his need for the information outweighs any privacy interests held by Jane Doe No. 3.

Second, the so-called "Category 2" arguments represent another misguided attempt by Jane Doe No. 3 to contend that the subpoena seeks information that is not relevant to this action. Dershowitz is seeking documents and other materials that are relevant to the claims and defenses in this action, as framed by the operative pleadings. In fact, it was Edwards's and Cassell's improper filing of lurid statements about Dershowitz in the Federal Action that gave rise to this action. Jane Doe No. 3's attempt to distinguish the Federal Action as involving entirely "different" issues is unavailing.

With respect to Category 4, the only information that Jane Doe No. 3 specifically identifies as being "plainly privileged" is the request for "All documents concerning your retention of the law firm Boies, Schiller & Flexner LLP, including but not limited to: signed letter of retainer, retention agreement, explanation of fees, and/or any documents describing the scope of retention." Contrary to Jane Doe No. 3's unsupported assertions of privilege, a retainer letter between a client and her attorney generally is not protected by the attorney-client privilege, nor is other information relating to the financial arrangements between the attorney and the client. *See, e.g.*, *Lawfinders Assocs., Inc. v. Legal Research Ctr., Inc.*, 193 F.3d 517, 518 (5th Cir. 1999) ("[T]he attorney-client privilege does not protect the type of information contained in the retainer letters."); *United States v. Davis*, 636 F.2d 1028, 1043-44 (5th Cir. 1981) (explaining that "[f]inancial transactions between the attorney and client, including the compensation paid by or on behalf of the client" generally are not protected by the attorney-client privilege).

At most, therefore, the information Dershowitz seeks in Request No. 25 is "confidential." Here again, however, Dershowitz's need for the information requested outweighs any privacy interests held by Jane Doe No. 3. The timing of Jane Doe No. 3's retention of the Boies, Schiller & Flexner firm is relevant to determining when Jane Doe No. 3 first raised allegations against Dershowitz, and Edwards's and Cassell's corresponding investigation into those allegations. Likewise, information about movie deals, book deals, or other financial arrangements that could give Jane Doe No. 3 an incentive to invent sensational allegations like those she has made against Dershowitz are directly relevant and highly probative of Jane Doe No. 3's credibility. The Court should order Jane Doe No. 3 to produce all documents that are responsive to the subpoena or, at a minimum, present those documents to the Court for *in camera* review.

IV. The proposed "limitations" on Jane Doe No. 3's deposition are not reasonable.

Jane Doe No. 3 also contends that if the Court is not prepared to excuse her from testifying altogether, the Court should issue a protective order that places the following extraordinary limitations on her deposition: (1) narrows the scope of testimony to preclude Dershowitz's counsel from pursuing certain lines of questioning; (2) includes a "cautionary notice" to Dershowitz's attorneys not to use derogatory terms in the deposition; (3) precludes Dershowitz from being physically present for the deposition; and (4) requires that the deposition be taken at the offices of her counsel, Boies Schiller & Flexner LLP. None of Jane Doe No. 3's proposed modifications are warranted.

First, the proposed "limitations" on Jane Doe No. 3's questioning would unreasonably narrow the scope of the deposition. Jane Doe No. 3 requests that she not be asked any questions "about [her] experiences as a sexually trafficked minor"; "about individuals that she was sexually trafficked to"; "about any rapes that occurred when she was a minor child"; or "about anything related to her sexual activity either as a minor or thereafter." Motion to Quash, at 12. As set forth above, these issues are directly relevant to the issues in dispute in this litigation – namely, whether Dershowitz made the purportedly defamatory statements while knowing that the Joinder Motion was "well-founded." Moreover, Jane Doe No. 3 has provided first-hand, public accounts regarding these very topics on several different occasions, including in an on-the-record interview that was published by a widely read British tabloid and in which she included details that not even a tabloid would publish them. She can hardly claim "embarrassment" as a reason not to give important evidence within her knowledge in light of her previous detailed accounts of her time as a "sex slave."

Second, Jane Doe No. 3 has not provided any support for her speculative assertions that Dershowitz's attorneys are likely to use harassing or derogatory language in a deposition, and the suggestion that they would do so insulting. The topics at issue (which Jane Doe No. 3 herself put at issue) must be fully explored, but counsel for Dershowitz will of course treat the witness with courtesy and respect and will conduct the deposition in a manner that fully comports with the Florida Rules of Civil Procedure, as well as the Florida Rules of Professional Conduct.

As explained below, Dershowitz is concerned about the conduct of the deposition from the other side, namely whether Jane Doe No. 3's counsel will improperly instruct the witness not to answer or otherwise coach the witness. To avoid any problems, Dershowitz requests the Court to appoint a Special Magistrate to preside over the deposition pursuant to Rule 1.490(b) of the Florida Rules of Civil Procedure and handle any disputes that may arise during the course of the deposition.

Third, the Court should not preclude Dershowitz from being physically present at the deposition of Jane Doe No. 3. "It is a venerated principle that a party has a right to be present at an oral deposition." *Ferrigno v. Yoder*, 495 So. 2d 886, 888 (Fla. 2d DCA 1986) (citing *Cacace v. Associated Technicians, Inc.*, 144 So. 2d 82 (Fla. 3d DCA 1962) and further explaining that, although a court may properly exclude a party in some circumstances, that measure should be "ordered rarely indeed" because a party's right to be present at each stage of a lawsuit is "virtually sacrosanct" (internal quotation marks omitted)). Jane Doe No. 3's purported fear of being in close physical proximity to Dershowitz because he is an "incredibly powerful individual," Motion to Quash at 5, is not the sort of "rare" circumstance that warrants an order precluding Dershowitz from attending the deposition in person.

Dershowitz is 76 years old. He has been a professor (now emeritus) at Harvard Law School for decades and is a highly regarded attorney, who is bound to act and will act in accordance with professional standards. Jane Doe No. 3 will be accompanied by counsel, as will Dershowitz. The notion that Jane Doe No. 3 is afraid to be in the same room with Dershowitz is preposterous. Moreover, the whole premise for this request (and many of the other limitations on discovery sought in the motion to quash) is that Jane Doe No. 3's allegations against Dershowitz are true. The court cannot and must not accept that premise, which Dershowitz contests in the strongest possible terms.

Fourth, the Court should deny Jane Doe No. 3's request to conduct the deposition at the offices of her counsel, Boies, Schiller & Flexner LLP. Because Jane Doe No. 3's lawyers refused to accept service of a subpoena and put Dershowitz to the trouble and expense of obtaining a commission and serving Jane Doe No. 3 in Colorado, Dershowitz could have insisted on taking the deposition in Colorado. Instead, the parties have agreed that Dershowitz will take the deposition of Jane Doe No. 3 in Florida. There is no reason that the deposition should not be taken at the office of the attorneys who noticed the deposition as is customary, absent agreement on some other mutually convenient but neutral site in the Fort Lauderdale area.

REQUEST FOR APPOINTMENT OF SPECIAL MAGISTRATE

As set forth above, Dershowitz respectfully requests that the Court appoint a Special Magistrate to preside over the deposition of Jane Doe No. 3. Rule 1.490(b) provides that "[t]he court may appoint members of The Florida Bar as special magistrates for any particular service required by the court, and they shall be governed by all the provisions of law and rules relating to magistrates except they shall not be required to make oath or give bond unless specifically required by the order appointing them." The undersigned has conferred with counsel for Jane

Doe No. 3 and counsel for Plaintiffs, who consent to the appointment of a Special Magistrate for the limited purpose of presiding over the deposition of Jane Doe No. 3 and ruling on any objections that may arise during the course of that deposition.

CONCLUSION

The Court should deny the Motion to Quash because (1) the documents and testimony that Dershowitz seeks are relevant to this litigation; and (2) Dershowitz's need for this information clearly outweighs Jane Doe No. 3's privacy interests. The Court also should deny Jane Doe No. 3's request for a protective order because the proposed modifications to the subpoena are not reasonable. The Court should also enter a reference pursuant to Rule 1.490 that appoints a Special Magistrate to preside over the deposition of Jane Doe No. 3.

Dated: May __, 2015

Respectfully Submitted,

s/ Thomas E. Scott

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CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the foregoing was sent via E-mail on May 6, 2015~~May 5, 2015~~~~May 5, 2015~~ to: Jack Scarola, Esquire, Searcy Denny et al [redacted] and [redacted], counsel for Plaintiffs, and to Sigrid McCawley, Esquire, Boies Schiller & Flexner, counsel for Jane Doe No. 3, at [redacted].

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