

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

JANE DOE NO. 2,

Plaintiff,

vs.

JEFFREY EPSTEIN,

Defendant.

CASE NO.: 08-CV-80119-MARRA/JOHNSON

JANE DOE NO. 3,

Plaintiff,

vs.

JEFFREY EPSTEIN,

Defendant.

CASE NO.: 08-CV-80232-MARRA/JOHNSON

JANE DOE NO. 4,

Plaintiff,

vs.

JEFFREY EPSTEIN,

Defendant.

CASE NO.: 08-CV-80380-MARRA/JOHNSON

JANE DOE NO. 5,

Plaintiff,

vs.

JEFFREY EPSTEIN,

Defendant.

CASE NO.: 08-CV-80381-MARRA/JOHNSON

JANE DOE NO. 6,

Plaintiff,

vs.

JEFFREY EPSTEIN,

Defendant.

CASE NO.: 08-CV-80994-MARRA/JOHNSON

JANE DOE NO. 7,

Plaintiff,

vs.

JEFFREY EPSTEIN,

Defendant.

CASE NO.: 08-CV-80993-MARRA/JOHNSON

██████,

Plaintiff,

vs.

JEFFREY EPSTEIN,

Defendant.

CASE NO.: 08-CV-80811-MARRA/JOHNSON

JANE DOE,

Plaintiff,

vs.

JEFFREY EPSTEIN,

Defendant.

CASE NO.: 08-CV-80893-MARRA/JOHNSON

DOE II,

CASE NO.: 09-CV-80469-MARRA/JOHNSON

Plaintiff,

vs.

JEFFREY EPSTEIN,

Defendant.

_____ /

JANE DOE NO. 101,

CASE NO.: 09-CV-80591-MARRA/JOHNSON

Plaintiff,

vs.

JEFFREY EPSTEIN,

Defendant.

_____ /

JANE DOE NO. 102,

CASE NO.: 09-CV-80656-MARRA/JOHNSON

Plaintiff,

vs.

JEFFREY EPSTEIN,

Defendant.

_____ /

**PLAINTIFF, [REDACTED]'S, EMERGENCY MOTION FOR PROTECTIVE ORDER
REGARDING THE DEPOSITIONS OF SUSAN POPE AND DR. SERGE THYS AND
INCORPORATED MEMORANDUM OF LAW**

Plaintiff, [REDACTED], by and through her undersigned attorneys, hereby files her Emergency Motion for Protective Order Regarding the Depositions of Susan Pope and Dr. Serge Thys and Incorporated Memorandum of Law, and in support there of states as follows:

1. This is an action to recover money damages against Defendant, JEFFREY EPSTEIN, for acts of sexual abuse and prostitution committed upon the then-minor, [REDACTED]

2. On Friday, July 31, 2009, Defendant unilaterally scheduled the deposition of Susan Pope for Thursday, August 6, 2009, at 10:00 a.m., and the deposition of Dr. Serge Thys on August 31, 2009, at 3:15 p.m. (Attached hereto as Exhibits "A" and "B")¹ Ms. Pope is a mental health therapist and Dr. Thys is a psychiatrist.

3. Plaintiff has plead thirty separate counts against EPSTEIN for separate incidences of abuse committed by EPSTEIN against Plaintiff pursuant to 18 U.S.C. §2255. 18 U.S.C. §2255, entitled "Civil remedy for personal injuries", creates a private right of action for minor children who were the victims of certain enumerated sex offenses. 18 U.S.C. §2255 also creates a statutory floor for the amount of damages a victim can recover for a violation of same. Plaintiff has also alleged a single count of Sexual Battery against EPSTEIN.

4. There presently exists between the Plaintiff and EPSTEIN a disagreement as to whether the statutory damage floor established in 18 U.S.C. §2255 is recoverable for each commission of an enumerated sex offenses listed in 18 U.S.C. §2255, or whether the statutory damage floor can only be enforced once, regardless of how many times a defendant perpetrates an enumerated sex offense against a minor victim.

5. This disagreement between the parties is properly the subject of Defendant's *Motion to Dismiss First Amended Complaint For Failure to State a Cause*

¹ Although Defendant's Certificate of Service states that the Notices were sent via email and U.S. Mail on July 30, they were not e-mailed to undersigned until the following day, July 31st.

of Action, and Motion For More Definite Statement; Motion to Strike, and Supporting Memorandum of Law (Attached hereto as Exhibit "C") which is currently pending before this Court.

6. In the event that the Court rules that Plaintiff can recover the statutory damage floor established in 18 U.S.C. §2255 for each proven incident of abuse committed by EPSTEIN upon her, Plaintiff intends to rely exclusively on the statutory damages, rather than those damages which are available at common law. (See Plaintiff, ██████'s Conditional Notice of Intent to Exclusively Rely on Statutory Damages Provided by 18 U.S.C. §2255 attached hereto as Exhibit "D"). If however, the Court rules that the statutory floor applies only one time, regardless of the number of times EPSTEIN committed an enumerated sexual offense against her, Plaintiff will be pursuing all damages available to her at both common law and by statute.

7. Given Plaintiff's intent to rely exclusively on the statutory damages available to her under 18 U.S.C. §2255 as outline above, Plaintiff will not be presenting any evidence of the extent of her physical, emotional, or pecuniary injuries, beyond evidence that she was the victim of sexual contact to which she was legally incapable of consenting by virtue of her age (including, pain and suffering, emotional distress, psychological trauma, mental anguish, humiliation, embarrassment, loss of self-esteem, loss of dignity, invasion of her privacy, and loss of the capacity to enjoy life). Accordingly, any testimony and/or discovery regarding those types of damages would not be relevant to any material issue pending in this case.

8. Presently pending before the Court is Defendant EPSTEIN's Motion to Compel Plaintiff [REDACTED] to Respond to Defendant's First Request to Produce and Answer Defendant's First Set of Interrogatories, and to Overrule Objections, and For an Award of Defendant's Reasonable Expenses (Attached hereto as Exhibit "E"). EPSTEIN is seeking from Plaintiff the production of certain treatment records of hers from the Susan Pope/Parent-Child Center, Inc., Dr. Serge Thys, a psychiatrist, Dominique Hyppolite/School District of Palm Beach County, Good Samaritan Hospital, St. Mary's Hospital, Florida Atlantic University and Gloria C. Hakkarainen, M.D.

9. Also pending before the Court is Plaintiff, [REDACTED] Motion for Protective Order Regarding Treatment Records From Parent-Child Center, Inc. (Susan Pope), Dr. Serge Thys, Records of Dominique Hyppolite/School District of Palm Beach County, Good Samaritan Hospital, St. Mary's Hospital, Florida Atlantic University and Gloria C. Hakkareinen, M.D., With Incorporated Memorandum of Law (DE 207) (Attached hereto as Exhibit "F").

10. Rather than allow the Court to rule on the pending motions regarding whether [REDACTED] as a victim of repeated sexual offenses at the hands of EPSTEIN, should be subjected to further humiliation, embarrassment, and victimization, EPSTEIN has apparently decided to forge ahead without waiting for the Court's rulings regarding the scope of permissible discovery in this case.

11. Neither the testimony of Susan Pope/Parent-Child Center, Inc. or Dr. Serge Thys will have any relevance whatsoever in the event that Plaintiff pursues only those statutory damages available to her under 18 U.S.C. §2255. To the contrary, the

testimony from these providers regarding the confidential and private treatment would only serve to further humiliate, embarrass, and victimize [REDACTED].

12. Furthermore, [REDACTED], the information sought by the Defendant is protected by the psychotherapist-patient privilege pursuant to the Supreme Court's decision in Jaffee v. Redmond, 518 U.S. 1, 116 S.Ct. 1923 (1996) ("All agree that a psychotherapist privilege covers confidential communications made to licensed psychiatrists and psychologists. We have no hesitation in concluding in this case that the federal privilege should also extend to confidential communications made to licensed social workers in the course of psychotherapy.") Ordinarily, a plaintiff does not place her mental condition in controversy merely by requesting damages for mental anguish or "garden variety" emotional distress. In order to place a party's mental condition in controversy the party must allege a specific mental or psychiatric disorder or intend to offer expert testimony to support their claim of emotional distress. Turner v Imperial Stores, 161 F.R.D. 89 (S.D.Cal. 1995). The evidence sought is also protected under the substantive privacy rights recognized in Florida Statute §§90.503.

13. Accordingly, Plaintiff respectfully moves for the entry of a protective order pursuant to Fed. R. Civ. Pro. 26(c) preventing the depositions of Susan Pope and Dr. Serge Thys. More particularly, Plaintiff requests the entry of an order precluding the depositions of Susan Pope and Dr. Serge Thys until such time as the Court rules on the issue regarding whether the statutory damage floor as contained in 18 U.S.C. §2255 applies to each proven commission of an enumerated sexual offense by EPSTEIN against CMA. Should the Court rule that 18 U.S.C. §2255 provides a per incident

damage floor, the testimony would have absolutely no relevance whatsoever. In the event that the Court rules that the damage floor applies only once, the parties can then further brief the Court as to whether [REDACTED] has placed her mental condition "in controversy" such that it operates as a waiver of the psychotherapist-patient privilege.

WHEREFORE, Plaintiff, [REDACTED], respectfully requests that this Court enter a protective order preventing the depositions of Susan Pope and Dr. Serge until such time as the Court decides whether the statutory damages pursuant to 18 U.S.C. §2255 are available to a victim of an enumerated sexual offense on a per incident basis.

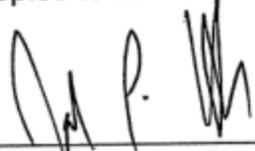
CERTIFICATE OF COMPLIANCE WITH LOCAL RULE 7.1

Counsel for the movant has conferred via e-mail with counsel for the Defendant regarding his position on Plaintiff's Emergency Motion for Protective Order Regarding the Depositions of Susan Pope and Dr. Serge and Incorporated Memorandum of Law and has advised the undersigned that he objects to the relief requested herein.

/s/ Jack P. Hill

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 4rd day of August, 2009, I filed the foregoing with the Clerk of the Court and send copies to all counsel of record via e-mail.



Jack Scarola
Florida Bar No.: 169440
Jack P. Hill
Florida Bar No.: 0547808
Searcy Denney Scarola Barnhart & Shipley, P.A.



Phone: 
Fax: 
Attorneys for Plaintiff

COUNSEL LIST

Richard H. Willits, Esquire

Richard H. Willits, P.A.

[REDACTED]

Phone:

Fax:

Robert Critton, Esquire

Burman Critton Luttier & Coleman LLP

[REDACTED]

Phone:

Fax:

Jack A. Goldberger, Esquire

Atterbury, Goldberger & Weiss, P.A.

[REDACTED]

Phone:

Bruce E. Reinhart, Esquire

Bruce E. Reinhart, P.A.

[REDACTED]

[REDACTED]

Phone:

Fax:

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

JANE DOE NO. 2,

Plaintiff,

vs.

JEFFREY EPSTEIN,

Defendant.

_____/

JANE DOE NO. 3,

Plaintiff,

vs.

JEFFREY EPSTEIN,

Defendant.

_____/

JANE DOE NO. 4,

Plaintiff,

vs.

JEFFREY EPSTEIN,

Defendant.

_____/

JANE DOE NO. 5,

Plaintiff,

vs.

JEFFREY EPSTEIN,

Defendant.

CASE NO.: 08-CV-80119-MARRA/JOHNSON

CASE NO.: 08-CV-80232-MARRA/JOHNSON

CASE NO.: 08-CV-80380-MARRA/JOHNSON

CASE NO.: 08-CV-80381-MARRA/JOHNSON

JANE DOE NO. 6,

Plaintiff,

vs.

JEFFREY EPSTEIN,

Defendant.

JANE DOE NO. 7,

Plaintiff,

vs.

JEFFREY EPSTEIN,

Defendant.

[REDACTED],

Plaintiff,

vs.

JEFFREY EPSTEIN,

Defendant.

JANE DOE,

Plaintiff,

vs.

JEFFREY EPSTEIN,

Defendant.

DOE II,

Plaintiff,

vs.

JEFFREY EPSTEIN,

Defendant.

CASE NO.: 08-CV-80994-MARRA/JOHNSON

CASE NO.: 08-CV-80993-MARRA/JOHNSON

CASE NO.: 08-CV-80811-MARRA/JOHNSON

CASE NO.: 08-CV-80893-MARRA/JOHNSON

CASE NO.: 09-CV-80469-MARRA/JOHNSON

JANE DOE NO. 101,

CASE NO.: 09-CV-80591-MARRA/JOHNSON

Plaintiff,

vs.

JEFFREY EPSTEIN,

Defendant.

JANE DOE NO. 102,

CASE NO.: 09-CV-80656-MARRA/JOHNSON

Plaintiff,

vs.

JEFFREY EPSTEIN,

Defendant.

ORDER ON PLAINTIFF, [REDACTED]'S, EMERGENCY MOTION FOR PROTECTIVE ORDER REGARDING THE DEPOSITIONS OF SUSAN POPE AND DR. SERGE THYS AND INCORPORATED MEMORANDUM OF LAW

This matter came before the Court upon the Plaintiff, C.M.A's Emergency Motion for Protective Order Regarding the Depositions of Susan Pope and Dr. Serge Thys and Incorporated Memorandum of Law. Having considered the motion, it is hereby ORDERED and ADJUDGED that:

Plaintiff's Emergency Motion for Protective Order is hereby GRANTED.

DONE AND ORDERED this _____ day of August, 2009.

LINNEA R. JOHNSON
United States Magistrate Judge

Copies to all Counsel of Record