

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

JANE DOE NO. 2,

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

Plaintiff,

vs.

JEFFREY EPSTEIN

Defendant.

_____ /

JANE DOE NO. 3,

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

Plaintiff,

vs.

JEFFREY EPSTEIN

Defendant.

_____ /

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

JANE DOE NO. 4,

Plaintiff,

vs.

JEFFREY EPSTEIN

Defendant.

_____ /

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

JANE DOE NO. 5,

Plaintiff,

JEFFREY EPSTEIN,

Defendant.

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

JANE DOE NO. 6,

Plaintiff,

JEFFREY EPSTEIN,

Defendant.

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

JANE DOE NO. 7,

Plaintiff,

JEFFREY EPSTEIN

Defendant.

C.M.A.,

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

Plaintiff,

JEFFREY EPSTEIN

Defendant.

JANE DOE,

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

Plaintiff,

JEFFREY EPSTEIN et al,

Defendants.

DOE II,

CASE NO.: 09-80469-CIV-MARRA-JOHNSON

Plaintiff,

JEFFREY EPSTEIN et al,

Defendants.

JANE DOE NO. 101, CASE NO.: 09-80591-CIV-MARRA-JOHNSON

Plaintiff,

JEFFREY EPSTEIN

Defendant.

JANE DOE NO. 102, CASE NO.: 09-80656-CIV-MARRA/JOHNSON

Plaintiff,

JEFFREY EPSTEIN,

Defendant.

Reply To Plaintiffs', Jane Does 2-7, Response In Opposition To Epstein's Motion To Compel And/Or Identify Jane Does In The Style Of This Case And Motion To Identify Jane Doe In Third-Party Subpoenas For Purposes Of Discovery, Or Alternatively, Motion To Dismiss Sua Sponte, With Incorporated Memorandum Of Law

Defendant, JEFFREY EPSTEIN (“Epstein” or “Defendant”), by and through his undersigned attorneys, hereby files his Reply to Plaintiffs’, Jane Does 2-7, Response in Opposition to Epstein’s Reply To Plaintiffs’, Jane Does 2-7, Response In Opposition To Epstein’s Motion To Compel And/Or Identify Jane Doe In The Style Of This Case And Motion To Identify Jane Doe In Third-Party Subpoenas For Purposes Of Discovery, Or Alternatively, Motion To Dismiss Sue Sponte, With Incorporated Memorandum Of Law (the “Motion to Identify”). In support, Mr. Epstein states as follows:

I. Introduction

1. Prior to these cases being consolidated, Epstein filed separate Motions to Identify in each of the cases filed by Jane Does 2-7. (DE 91 - Jane Doe 2, DE 84 - Jane Doe 3, DE 101- Jane Doe 4, DE 86 - Jane Doe 5, DE 41 - Jane Doe 6, and DE 52 - Jane Doe 7). Plaintiff filed their collective or omnibus response to the above matters in the Case No.: 80119, which can be found at DE 114.

2. Epstein filed his Motion to Identify for the sole purpose of obtaining discovery related to the allegations in Plaintiffs’ respective complaints and to properly defend and investigate the matters that have been filed against him as would ANY Defendant. However, Plaintiffs gather together in a continued effort to stonewall and prevent discovery of their past medical, psychological and employment histories, and for good reason – Plaintiffs’ damages will be substantially reduced due to several preexisting and diagnosed conditions for which they now attempt to pawn off on Epstein in an effort to increase their damages. Appalling incidents took place in each of the Plaintiffs’ lives prior to any of their alleged encounters with Epstein including, but not limited to, [REDACTED]

come forward with information refuting the Plaintiffs' allegations, Epstein will withdraw that particular relief if Epstein is permitted to conduct the necessary and regular discovery related to Plaintiffs' allegations in their complaint (i.e., to identify each Jane Doe in third-party subpoenas and to issue those subpoenas to third-party treaters and current and former employers and others such that Epstein can obtain records related directly to Plaintiffs' claims and damages for severe and permanent traumatic injuries, including mental, psychological and emotional damages, etc...). Cherenfant v. Nationwide Credit, Inc., 2004 WL 5315889 (S.D. Fla. 2004)(order allowing discovery of medical records consistent with Plaintiff's allegations in complaint). Failure to allow Epstein discovery is severely prejudicing Epstein and, therefore, should be considered on an emergency basis by this court. If regular discovery is not permitted, how can any defendant be expected to defend the allegations made against him by any Plaintiff, Jane Doe or otherwise? Without the healthcare provider information and employment history, it will be impossible to conduct both thorough depositions of the Plaintiffs and a meaningful independent medical/psychological examination by Epstein's defense expert, Dr. Hall. This case should be treated no differently than any other case in which a Plaintiff seeks personal injury damages.

5. Once again, this court has already ruled that Plaintiffs can only be deposed once (Case #80119, DE 98 at ¶5 – "Defendant is limited to a single deposition of each Plaintiff, during which defendant may depose the Plaintiff as both a party and a witness."). However, it appears that Epstein is being compelled to take Plaintiffs' depositions and independent medical evaluations without ANY medical or employment histories. As such, the undersigned will not be able to cross-examine Plaintiffs about

their past medical and employment histories and, as a result, Epstein's expert physician will not have the benefit of that type of questioning and answers thereto before the compulsory psychological/psychiatric examination of the Plaintiffs. This is not only unheard-of, but it is inherently unfair, nonsensical, flies directly in the face of the liberal discovery rules and directly violates Epstein's due process rights. This court has ordered that we move these cases forward. However, Plaintiffs' strategy is to delay or prevent the very discovery this court said Defendant should undertake!

6. Moreover, Plaintiffs agreed at the June 12, 2009 hearing on Defendant's Motion to Stay that regular discovery could proceed. See Composite Exhibit "A" at pages 26-30 & 33-34. For instance, the court asked Plaintiffs' attorneys the following questions:

The Court: [] So again, I just want to make sure that if the cases go forward and if Mr. Epstein defends the case as someone ordinarily would defend a case being prosecuted against him or her, that that in and of itself is not going to cause him to be subject to criminal prosecution? (Ex. "A," p.26).

The Court: You agree he should be able to take the ordinary steps that a defendant in a civil action can take and not be concerned about having to be prosecuted? (Ex. "A," p.27).

The Court: Okay. But again, you're in agreement with everyone else so far that's spoken on behalf of a plaintiff that defending the case in the normal course of conducting discovery and filing motions would not be a breach? (Ex. "A," p.30).

Mr. Horowitz – counsel for Jane Does 2-7: Subject to your rulings, of course, yes. (Ex. "A," p.30).

The Court: But you're not taking the position that other than possibly doing something in litigation which is any other discovery, motion practice, investigations that someone would ordinarily do in the course of

defending a civil case would constitute a violation of the agreement? (Ex. "A," p.34).

Ms. Villafana: No, your honor. I mean, civil litigation is civil litigation, and being able to take discovery is part of what civil litigation is all about.... But. . . , Mr. Epstein is entitled to take the deposition of a Plaintiff and to subpoena records, etc. (Ex. "A," p.34)

7. It is clear from the transcript attached as Exhibit "A" that each of the Plaintiffs' attorneys, including Mr. Horowitz for Jane Does 2-7, expected and conceded that regular discovery would take place (i.e., discovery, motion practice, depositions, requests for records, and investigations). Despite the foregoing, Plaintiffs now argue that they should not be subject to regular discovery procedures by serving subpoenas on various third-parties which identify each Jane Doe by name for the purpose of obtaining relevant information related to claims that each of the Plaintiffs have made against Epstein. The truth is that this is just a front to cover-up each of the Plaintiffs' disturbed pasts and their preexisting conditions, which will arguably reduce their damages. Plaintiffs cannot expect this court to limit discovery directed at them simply because of the allegations they assert in the complaints (i.e., sexual battery). Sexual Battery is a tort, and discovery has always been permitted on such a cause of action despite the alleged facts surrounding such a claim. Plaintiffs must keep in mind that as pled, these cases are personal injury cases seeking personal injury damages. Plaintiffs cannot expect any special treatment from this court based on their self-serving allegations which merely seek to limit discovery.

8. Surprisingly, Plaintiffs' counsel requests that this court substantially limit the rules of discovery by allowing Plaintiffs to provide Defendant with the requested information only after same has been in Plaintiff's possession. No authority is provided

by Plaintiffs allowing for such a procedure. The undersigned finds it hard to believe that any firm would ever allow an opposing party to request records for it and mail those records to the requesting firm only after the opposing firm had an opportunity to review and filter through same. No valid discovery objections or exemptions exist preventing necessary and reasonable discovery. To hold otherwise prevents Mr. Epstein from preparing and defending this matter. Plaintiffs' requests in this regard should be flat-out denied.

9. For the courts ease of reference, the transcripts, tapes and pages referenced in Dr. Hall's Affidavits and referenced throughout this motion are generated from the interview Dr. Kliman, the Plaintiffs' expert, conducted on each of said Plaintiffs. Should the court wish to review those transcripts, tapes and interviews, same will be provided upon request.

II. Reply and Memorandum of Law

a. The Allegations in the Amended Complaints As to Jane Does 2-7

10. The amended complaints filed by Jane Does 2-7 against Jeffrey Epstein make allegations of sexual assault and abuse upon a minor and seek damages in excess of \$50 million. Jane Does 2-7 allege confusion, shame, humiliation, embarrassment, and severe psychological and emotional injuries. It is further alleged that they suffered, and will continue to suffer, severe and permanent traumatic injuries, including mental, psychological, and emotional damages. Plaintiffs allege intentional infliction of emotional distress, severe emotional distress, severe mental anguish and pain. They further allege that they suffered personal injury including mental, psychological and emotional damage. Dr. Hall Affidavit of Jane Does 2-4, Exhibits "B-G," respectively.

b. Jane Doe Number 2

11. Plaintiff, Jane Doe 2, reported to Dr. Kliman that [REDACTED]

[REDACTED]

c. Jane Doe Number 3

12. Plaintiff, Jane Doe 3, reports [REDACTED]

[REDACTED]

[REDACTED]

13. Dr. Hall also notes in paragraph 37 of his Affidavit that Jane Doe 3 gave information to Dr. Kliman relative to her alleged encounters with Epstein which directly conflict with her probable cause affidavit and the Palm Beach Police Incident Report. Ex. "C" at ¶37.

d. Jane Doe Number 4

14. Plaintiff, Jane Doe 4, reports to Dr. Kliman [REDACTED]

[REDACTED]

e. Jane Doe Number 5

15. Plaintiff, Jane Doe 5, reported to Dr. Kliman that [REDACTED]

[REDACTED]

[REDACTED]

f. Jane Doe Number 6

16. Plaintiff, Jane Doe Number 6's interrogatories note [REDACTED]

[REDACTED]

[REDACTED]

17. Plaintiff is also noted [REDACTED]

18. Plaintiff, however, failed to report to Dr. Kliman that [REDACTED]

g. Jane Doe Number 7

19. Jane Doe 7 has withheld all pertinent records from discovery. While various conflicting statements are noted in Dr. Hall's affidavit, Ex. "G", the Defendant is unable to determine what prior existing conditions Jane Doe 7 had before her alleged encounters with Epstein. This is a direct result of Plaintiffs' collective efforts to prevent discovery all together. However, it is clear from Dr. Hall's Affidavit that Jane Doe 7

does have the propensity to lie in an attempt to further her case.

III. Conclusion and Requested Relief

20. For further elaboration of Plaintiff's history and background, access to all available records is crucial to understand the impact of any of these events on Plaintiff's. See Exhibits "B-G." It is critical for an IME examiner to be able to make a cogent assessment of any plaintiff and to understand their medical, social, academic, psychological and psychiatric condition/state prior to any act of alleged victimization. See Exhibits "B-G." There are a number of variables that combine to determine the effects of such alleged victimization, including the type and character of the alleged assault, and key victim variables such as demographics, psychological reactions at the time of the trauma, previous psychiatric or psychological history, previous victimization history, current or previous psychological difficulties, and general personality dynamics and coping style, as well as sociocultural factors such as drug use/abuse; poverty; social inequity and/or inadequate social support; any previous history of abuse within or outside the family; whether individuals were abused by strangers, acquaintances or family members; and whether there was any history of indiscriminate behavior that may have placed them at increased risk. See Exhibits "B-G." It is important to know if there had been previous sexual conduct, contact with police or welfare agencies, alcohol or drug use/abuse, voluntary sexual activity, contraceptive use, genital infections, or apparent indifference to previous abuse. See Exhibits "B-G." It is also essential to understand the Plaintiffs' level of emotional support, whether any significant psychiatric illnesses were present, whether they were taking any medications (prescribed or non-prescribed), whether there had been previous suicide attempts, thoughts, plans, etc. See Exhibits "B-

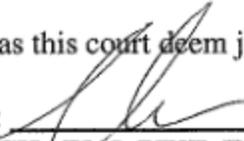
G.” Knowledge of Plaintiffs’ relationships with their families and familial factors, including social disadvantage, family instability, impaired parent/child relationship, and parental adjustment difficulties is also critical. See Exhibits “B-G.” It is, therefore, crucial that the independent medical examiner has available to him a full and complete record that includes medical, previous legal, social, criminal, academic, psychological and psychiatric records/data; psychological tests; laboratory tests; and clinical, hospital, physician records. See Exhibits “B-G.” These, in essence, are the same and similar records that plaintiff’s expert witness (Dr. Kliman) feels are essential for him to do an appropriate evaluation. See Exhibits “B-G.’ To obtain the necessary information, it will be necessary to identify the plaintiff by name. See Exhibits “B-G.” Such identification will not humiliate the plaintiff since all we are requesting is pertinent information as noted above relative to their past medical and psychiatric histories and conduct. See Exhibits “B-G.”

21. Cherenfant v. Nationwide Credit, Inc., 2004 WL 5315889 (S.D. Fla. 2004) allows for the discovery sought in Sections II. a-g above and in Defendant’s Motion to Identify. See also Fed.R.Civ.Pro. 26; Oppenheimer Fund, Inc. v. Sanders, 437 U.S. 340, 352 (1978); Dunbar v. U.S., 502 F.2d 206 (5th Cir. 1974); Rossbach v. Rundle, 128 F.Supp.2d 1348, 1354 (S.D. Fla. 200); Fed.R.Civ.Pro 33(b)(4)(Plaintiffs must show that the requests are unreasonable or burdensome, which they have failed to do in the instant matter); Panola Land Buyers Ass’n v. Shuman, 762 F.2d 1550, 1559 (11th Cir. 1985); Ward v. Estaleiro Itajai S/A, 541 F.Supp.2d 1344, 1353-54 (S.D. Fla. 2008) (discussing the rules’ intended limited court involvement in discovery).

22. It is clear that the requested relief/discovery goes to the heart of the

Plaintiffs' allegations. Therefore, to prevent meaningful and regular discovery is in direct contradiction of the Rules allowing for a liberal and broad discovery. In addition, allowing Plaintiffs' counsel to obtain and produce Defendant's discovery for him is not only absurd but not contemplated by the law or the Federal Rules.

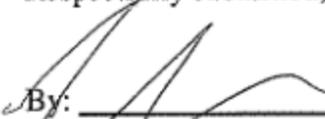
Wherefore, Epstein requests that he be granted leave to identify Plaintiffs by their legal names in Third-Party Subpoenas (but not file them in Court or, if required, in a redacted form), that Plaintiffs' requests to obtain discovery and then provide it to Defendant through their counsel be denied, or in the alternative, that this court dismiss these actions Sue Sponte and for such other and further relief as this court deem just and proper.

By: 
MICHAEL J. PIKE, ESQ.
Florida Bar #617296

Certificate of Service

I HEREBY CERTIFY that a true copy of the foregoing was electronically filed with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record identified on the following Service List in the manner specified by CM/ECF on this 5 day of Aug, 2009

Respectfully submitted,

By: 
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Florida Bar No. 224162


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Certificate of Service
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