

Farmer, Jaffe, Weissing, Edwards, Fistos & Lehrman, P.L.



January 19, 2010

Honorable [REDACTED]
Main Judicial Complex
Palm Beach County Courthouse



Re: [REDACTED] v. Jeffrey Epstein / Case No. 502008CA028051XXXXMB AB
1/26/10 @ 8:45 AM UMC Hearing on Defendant's Motion to Compel Presidential
Women's Center to Comply with Subpoena Duces Tecum

Dear Judge [REDACTED]

With reference to the above captioned Hearing, enclosed please find a copy of Plaintiff's
Objection to Defendant's Subpoena Duces Tecum Directed to Presidential Women's Center and
Motion for Protective Order and Response to Defendant's Motion to Compel same.

A copy of the case cited in the Objection and Response is also enclosed.

Should you have any questions, please feel free to call.

Thank you for your consideration and interest.

Very truly yours,

[REDACTED]
Bradley J. Edwards

BJE/bw
Enc.

cc: Michael Burman, Esq.
Jack A. Goldberger, Esq.

IN THE CIRCUIT COURT OF THE 15th
JUDICIAL CIRCUIT IN AND FOR PALM
BEACH COUNTY, FLORIDA

CASE NO: 502008CA028051XXXXMB AB

[REDACTED]

Plaintiff,

v.

JEFFREY EPSTEIN,

Defendant.

_____/

**OBJECTION TO DEFENDANT'S SUBPOENA DUCES TECUM DIRECTED TO
PRESIDENTIAL WOMEN'S CENTER AND MOTION FOR PROTECTIVE ORDER
AND RESPONSE TO DEFENDANT'S MOTION TO COMPEL PRESIDENTIAL
WOMEN'S CENTER TO COMPLY WITH SUBPOENA DUCES TECUM**

Plaintiff, [REDACTED] hereby files her Objection to the Subpoena Duces Tecum served up Presidential Women's Center and Response to Defendant's Motion to Compel Presidential Women's Center to comply with Subpoena Duces Tecum and as grounds states as follows:

**OBJECTION TO THE SUBPOENA DUCES TECUM FOR DEPOSITION
SERVED ON PRESIDENTIAL WOMEN'S CENTER**

1. Defendant Epstein served a Subpoena Duces Tecum for Deposition (records only) on Presidential Women's Center on November 13, 2009 (Attached hereto as Exhibit "A").

2. At the time when the subpoena was apparently served, Defendant Epstein and his counsel were fully aware that the undersigned's firm (RRA) had recently disbanded and thus the undersigned was without a working office,

without firm affiliation, and that Plaintiff was without counsel to represent her or file any motions or objections on her behalf at that time.

3. In addition to Defendant serving said Subpoena, the Notice of Deposition that was filed contemporaneously was mailed to the undersigned's former law firm address, as evidenced by the Certificate of Service on the Notice – an office that has not been in effect since March of 2009, a fact that was well known to Defendant.

4. Defendant either made a clerical mistake or intentionally chose the time to serve this subpoena at a fax number and address that they knew had not been in use for almost a year.

5. So while Defendant Epstein has taken the position that any objection to the Subpoena was waived, Plaintiff disputes that allegation citing the aforementioned reasons in either event.

6. At this time, and pursuant to Florida Rules of Civil Procedure, Plaintiff objects to the Subpoena and the production of such records, as clearly those records are only being sought for the purpose of harassing and humiliating Plaintiff, and this discovery attempt is not reasonably calculated to lead to the discovery of admissible evidence. See Peisach v. Antuna, 539 So.2d 544 (Fla. 3d DCA 1989).

7. This objection is further explained below in Plaintiff's response to Defendant's Motion to Compel directed at Presidential Women's Clinic.

8. Wherefore, Plaintiff requests that this Court find this Objection timely, given the circumstances, and hear the merits of the Objection.

**MOTION FOR PROTECTIVE ORDER AND RESPONSE TO DEFENDANT'S
MOTION TO COMPEL PRESIDENTIAL WOMEN'S CENTER TO COMPLY
WITH SUBPOENA DUCES TECUM**

1. Defendant Epstein, filed his Motion to Compel Presidential Women's Center to produce records related to a possible abortion or other female issue that may have been had by Plaintiff.

2. In his Motion, Defendant, consistent with his litigation pattern in this and related cases, has cited and attached Federal Court Orders from related cases in support of his Motion.

3. Attachment B and C to Defendant's Motion are Orders entered by Magistrate [REDACTED] related to other cases and that address specific issues related to those other cases, and as the Court can see upon review are not relevant to the Motion to Compel at hand.

4. Not surprisingly, Defendant attached DE #413, an Omnibus Order in Case #08-80119, which does in fact address the issue of abortions related to another Plaintiff, and Defendant cites to the language from that Order that best serves his purpose.

5. What Defendant *forgot* to tell the Court was that DE #413 was appealed (DE #430 of 08-80119) and overturned (DE #433 of 08-90119). DE #430 is attached as Exhibit B and DE #433 is attached as Exhibit C.

6. As is clear from a reading of Exhibit C to this Motion, Defendant's were admonished for the ..."repetitive questioning about exceedingly sensitive issues such as ...abortions..."

7. That Court further warned Defense counsel about questioning that appears to be "badgering and harassing" and that serve to "needlessly revictimize, embarrass, and humiliate" the victims.

8. The discovery being sought in this instance is ONLY being sought to humiliate and harass Plaintiff, and could not possibly serve any other purpose.

9. The choice to have an abortion is a legal right of any person, yet it is one of the most sensitive and controversial subjects and has been for years.

10. The undersigned would not object to Defendant asking Plaintiff whether she has had any abortions and whether or not it had a psychological impact; however, these records are not relevant to any of the current liability or damage issues and are only an attempt by Defendant to intimidate and humiliate Plaintiff.

11. This subpoena is not the first tactic employed by Defendant to intimidate and harass Plaintiff; in fact, Defendant has made it quite clear that intimidation is Defendant's primary objective.

12. In that vein, Defendant has served two letters on the undersigned with instructions to share the letters with Plaintiff, and while under the guise of a "Confidential Settlement" letter, each letter is filled with threats.

13. Due to the fact that each letter was titled as a "Confidential Settlement" document, the undersigned has not attached these letters, but invites the Court to inspect each letter in-camera, so that the Court is aware of Defendant's true intentions, when he subpoenas information such as he is doing here.

14. The letters go well beyond any real settlement negotiations, and can only be interpreted as threatening and a clear attempt to further intimidate Plaintiff.

15. Defendant's Subpoena for any records related to any possible abortion should be stricken and a Protective Order entered as the purpose for such a request is abundantly clear and has no relevance whatsoever in this law suit.

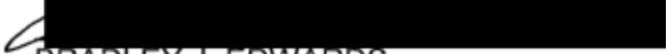
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original of the above and a copy of the foregoing has been provided this 19th day of January 2010 via U.S. Mail and email transmittal to all those on the attached service list.

**Farmer, Jaffe, Weissing,
Edwards, Fistos & Lehrman, P.L.**



By:


BRADLEY J. EDWARDS
Florida Bar No.: 542075

SERVICE LIST

Robert D. Critton, Jr.
BURMAN, CRITTON, et al.



Jay Howell, Esq.
Jay Howell & Assoc.



Jack Alan Goldberger, Esq.
Atterbury Goldberger et al.



IN THE COURT OF THE FIFTEENTH
JUDICIAL CIRCUIT, IN AND FOR PALM
BEACH COUNTY, FLORIDA

CASE NO. 502008CA028051XXXXMB AB

[REDACTED]

Plaintiff,

v.

JEFFREY EPSTEIN,

Defendant.

_____ /

NOTICE OF TAKING DEPOSITION DUCES TECUM

PLEASE TAKE NOTICE that the undersigned attorney will take the deposition duces tecum (See attached Exhibit "A") of:

DEPONENT

Records Custodian
Presidential Women's Center

[REDACTED]

DATE & TIME

November 30, 2009
10:30 a.m.

LOCATION OF DEPOSITION

Burman Critton Luttier & Coleman,
LLC

[REDACTED]

upon oral examination, before Prose Court Reporting, a Notary Public, or any other officer authorized by law to take depositions in the State of Florida. The oral examination is being taken for the purpose of discovery, for use at trial, or for such other purposes as are permitted under the applicable Statutes of Rules of Court.

Certificate of Service

I HEREBY CERTIFY that a true copy of the foregoing was sent by fax and U.S. Mail to the following addressees on this 13th day of November, 2009:

Brad Edwards, Esq.
Brad Edwards and Associates, LLC

[REDACTED]

Counsel for Plaintiff

Jack Alan Goldberger, Esq.
Atterbury Goldberger & Weiss, P.A.

[REDACTED]

Co-Counsel for Defendant Jeffrey Epstein



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Jay Howell, Esq.
Jay Howell & Associates, P.A.



Co-counsel for Plaintiff

BURMAN, CRITTON, LUTTIER & COLEMAN, LLP



By: _____

Robert D. Critton, Jr.
Florida Bar 
Michael J. Pike
Florida Bar 

(Counsel for Defendant Jeffrey Epstein)

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EXHIBIT "A" – DUCES TECUM

A copy of the entire file of [REDACTED] Date of Birth: [REDACTED] Social Security No. XXX-XX-
[REDACTED] including but not limited to any forms completed by the patient, medical records, reports, lab
or diagnostic test results, psychological test results, raw test data, letters of protection, fee
agreements, consultants' reports, letters to and from the patient, handwritten office notes by any
person, telephone messages, computer data kept on the patient, attorney letters, photographs,
charts, intake forms, release forms and consultations from January 1, 2002 through the date of this
Subpoena. *If you require the entire Social Security number, please contact our office at [REDACTED]
[REDACTED] and ask for Bobbie McKenna.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

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

JANE DOE NO. 2,

Plaintiff,

vs.

JEFFREY EPSTEIN,
Defendant.

Related Cases:

08-80232, 08-80380, 08-80381, 08-80994,
08-80993, 08-80811, 08-80893, 09-80469,
09-80591, 09-80656, 09-80802, 09-81092,

**JANE DOE NO. 4's APPEAL PURSUANT TO S.D.FL.A.L.MAG.R. 4
OF ORDER DENYING HER MOTION FOR PROTECTIVE ORDER
AGAINST SECOND DAY OF DEPOSITION EXTENDING PAST SEVEN HOURS**

Plaintiff, Jane Doe No. 4 ("Plaintiff"), by and through undersigned counsel, files this Appeal, pursuant to S.D.Fla.Mag.J.R. 4 and 28 U.S.C. §636(b)(1)(A), of the Magistrate Judge's Omnibus Order entered on November 17, 2009 (DE 413), which denied Jane Doe No. 4's Motion for Protective Order Against Second Day of Deposition Extending Past Seven Hours, on the grounds set forth below.

I. Introduction and Summary

Defendant Jeffrey Epstein's demonstrated strategy in defense of these cases has been to harass, intimidate, embarrass and humiliate the Plaintiffs. He has done this through the aggressive use of investigators; extensive and invasive discovery on the details of the Plaintiffs' sexual histories with men other than Epstein; and now, by means of a badgering and berating the



Plaintiffs at deposition.¹ The Plaintiffs in these cases – who generally have low socio-economic backgrounds and poor self-esteem – are particularly vulnerable to Defendant’s nefarious tactics, and indeed it may fairly be inferred that this is a significant reason why Jeffrey Epstein, a convicted sex offender, selected them to be his victims in the first place. By denying Plaintiff’s Motion for Protective Order in its entirety, the Magistrate Judge’s Order (DE 413) is clearly erroneous and contrary to law. This Order compels Jane Doe No. 4 to sit for an additional four hours of deposition, after having her deposition taken for five hours and thirty-five minutes (excluding breaks) over the course of a full day. Plaintiff appeals this Order on the grounds that it fails entirely to recognize or acknowledge that:

- Under Fed.R.Civ.P. 30(d)(1) and S.D.Fla.L.R. 26.1(K), the 7-hour time limit for depositions is presumptive; it is clearly Defendant’s burden by motion to show cause for a longer deposition, which Defendant fails entirely to satisfy.²
- Under S.D.Fla.L.R. 30.1(A)(5), the questioning of Jane Doe No. 4 during the first 5 ½ hours of her deposition was abusive. It demonstrates that no more than 7 hours are necessary for a fair and appropriate deposition, and that the additional four hours of deposition time ordered by the Magistrate Judge will undoubtedly subject Jane Doe No. 4 to further abuse as described in S.D.Fla.L.R. 30.1(A)(5).
- Under this Court’s Order Consolidating Cases dated May 14, 2009 (DE 98), any waiver of the 7 hour limit is subject to the admonition that no party has the authority

¹ Plaintiffs, Jane Does Nos. 2-8, sought in prior motion practice various protections against the conduct of Epstein’s investigators and discovery of the Plaintiffs’ sexual histories. In both of these instances, the Magistrate Judge denied Plaintiffs any relief. See infra.

² Defendant not only fails to satisfy this burden, but the 446 pages of transcripts of the existing deposition, in three volumes, demonstrate by themselves that Defendant should not be permitted to exceed the 7-hour limit. See infra and attached Exhibits 1-3.

“to take unnecessarily long depositions, or abuse the process.” (¶ 8). The Magistrate Judge’s Order contains no such admonition, yet the transcripts of the existing deposition of Jane Doe No. 4 demonstrate vividly Defendant’s abuse of the deposition process.

Rules 26(c) and 30(d)(1) of the Federal Rules of Civil Procedure are designed to prevent exactly the misconduct demonstrated in the present case - Jeffrey Epstein’s use of discovery as a tactic with the ulterior motive to harass and humiliate the Plaintiff. The Magistrate Judge’s failure to provide *any* protection to Plaintiff whatsoever under these circumstances, and perfunctorily grant Defendant *carte blanche* in discovery,³ is clearly erroneous.

II. Procedural Background

Jane Doe No. 4’s deposition was originally scheduled for September 16, 2009. On that date, while Plaintiff was walking to the conference room where the deposition was to be taken pursuant to Jeffrey Epstein’s notice, Jeffrey Epstein appeared within a few feet of Plaintiff, in contravention of the express agreement of Epstein’s counsel and in violation of the No-contact Order entered by this Court. (DE 238). This gave rise to motion practice that was resolved by the Magistrate Judge’s Order dated October 23, 2009 (DE 369), which required that Jane Doe No. 4 sit for deposition on October 27, 2009 at 11:00 a.m., and prohibited Jeffrey Epstein from appearing at the deposition.

Prior to the deposition, Plaintiffs’ counsel advised Defendant’s counsel of their position that the deposition could go no longer than 7 hours absent court order. Jane Doe No. 4 appeared

³ As discussed below, the Magistrate Judge issued her decision granting Defendant all the relief requested in his Response Memorandum before Plaintiff had an opportunity to file a Reply to Defendant’s Response Memorandum, and without the benefit of the transcripts of Jane Doe No. 4’s existing deposition, which had not been filed at the time that the Order was entered.

for deposition at the court ordered date and time. Jane Doe's deposition proceeded from 11:11 a.m. until 6:05 p.m. The deposition transcript is in three volumes and at this point **446 pages** in length. A complete copy of the deposition transcripts, volumes I-III, is attached hereto as Exhibits 1-3, respectively.

Subsequent to the deposition, the parties attempted to reach agreement on the remaining time for a second day of deposition of Jane Doe No. 4. Plaintiff's counsel calculated the aggregate time of Jane Doe No. 4 in deposition on October 27, 2009 (excluding breaks) as 5 hours, 35 minutes, which Defendant's counsel did not dispute. Defendant's counsel, however, insisted on taking Jane Doe No. 4's deposition for an additional 4 hours, giving Defendant almost 10 hours of aggregate deposition time of Jane Doe No. 4 over two days. As a result, Plaintiff filed a Motion for Protective Order on November 3, 2009 (DE 392). Prior to the filing of this Motion, another Plaintiff in these cases represented by different counsel, Jane Doe, filed a similar Motion for Protective Order (DE 378), attempting to limit Defendant from taking a second day of Jane Doe's deposition. The principal argument set forth in both Motions concerned interpretation of the Court's Order Consolidating Cases dated May 14, 2009 (DE 98). Plaintiffs contended that the waiver of the 7-hour deposition limit set forth in paragraph 8 of that Order did not authorize the Defendant to take a deposition exceeding 7 hours of a Plaintiff absent court order. On November 12, 2009, Defendant filed his response in opposition to Jane Doe No. 4's Motion for Protective Order. (DE 404). Under S.D.Fla.L.R. 7.1, Plaintiff had until November 23, 2009 to file a Reply. However, well prior to this date, on November 17, 2009, the Magistrate Judge issued an Omnibus Order (DE 413) which denied the relief sought in the

Motions of both Jane Doe and Jane Doe No. 4 in their entirety.⁴ The decretal portion of this Omnibus Order, which Jane Doe No. 4 appeals, is as follows:

ORDERED AND ADJUDGED that Plaintiff Jane Doe's Motion for Protective Order Barring Second Deposition and for Sanctions. (D.E. #378); and Plaintiff Jane Doe No. 4's Motion for Protective re Second Day of Deposition (D.E. # 392) are **DENIED**. Epstein's counsel is hereby given leave to re-depose Jane Doe for up to 3 additional hours and hereby given leave to re-depose Jane Doe 4 for up to 4 additional hours.

III. Abusive Deposition Questioning

The transcripts of Jane Doe No. 4's deposition, attached hereto as Exhibits 1-3, are replete with instances of abusive deposition conduct, consisting of harassing, humiliating and irrelevant questions having no legitimate discovery purpose. This abusive and unnecessary questioning demonstrates that: (1) the deposition of Jane Doe No. 4, as well as the other Plaintiffs in these cases, can be fairly completed within 7 hours; and (2) providing Defendant with an additional four hours of deposition time for Jane Doe No. 4 will more likely than not subject Jane Doe No. 4 to additional abuse.

For example, Defendant's counsel asked Jane Doe the following sequence of questions in response to her testimony that she has had three abortions:

Q. -- you went and aborted three kids? Why wouldn't you want people to know that?

Q. Does it cause you any upset to know that you aborted three kids in your life?

⁴ Plaintiff in her Motion for Protective Order described the nature and extent of the abusive questioning at Jane Doe No. 4's deposition, and stated her intent to file the transcript when it became available. (Motion (DE 392) at pp. 3-4 & n.1). Nonetheless, the Court issued the Omnibus Order without the benefit of the three-volume transcript, which is now filed as Exhibits 1-3 to this Appeal.

Q. Were you told before each of these abortions that you had what they call viable fetuses?

Q. Does it give you any, any emotional pain that you aborted three fetuses?

Q. It's contrary to everything you ever learned as a child as a Roman Catholic, isn't it?

Q. Does your mom know you aborted three kids?

Q. Does your dad know you aborted three kids?

Q. What do you think they'd think?

Q. Do you think they're going to be happy about that?

Q. Is it going to cause you a little emotional upset?

Q. My question is, is it going to cause you any emotional upset?

Q. Wouldn't you agree with me that aborting three fetuses - . . . would be far more traumatic than giving a man a massage in the nude?

Q. I want you to tell the ladies and gentlemen of the jury whether or not aborting three fetuses is more traumatic than giving a man a massage in the nude.

(Transcript, Exh. 2, pp. 301-305). While it may not be inappropriate to ask a plaintiff in a personal injury case a question about whether having abortions caused her emotional distress, the foregoing questions were intended and designed to provoke, harass, embarrass and humiliate Jane Doe No. 4. Early in this line of questioning, Jane Doe No. 4 answered "of course" to the question of whether having these abortions caused her upset. (*Id.*, p. 301, line 19). Despite this, Defendant's counsel proceeds through four additional pages of deposition transcript asking essentially the identical question in different ways, unmercifully badgering Jane Doe No. 4 on an

enormously sensitive topic, and going so far as to intimate that he will disclose the abortions to her parents.⁵

As another example, Defendant's counsel marked as Exhibit 1 to the Deposition the Proposal for Settlement that was served on Plaintiffs' counsel in March, 2009. (Transcript, Exh. 1, p. 71). He proceeds to ask Jane Doe No. 4 a series of questions about this Proposal for Settlement, including whether she has seen and had an opportunity to review the Proposal. Of course, such questions could never lead to competent, admissible evidence at trial. (*Id.*, pp. 71-73). See S.D.Fla.L.R. 30.1(A)(5).⁶

Defendant's counsel asked Jane Doe No. 4 a number of repetitive questions, over approximately 9 transcript pages, regarding how she came to see Plaintiffs' forensic expert, Dr. Gilbert Kliman, who has been retained in this case by Plaintiffs' counsel pursuant to Fed.R.Civ.P. 26(a)(2) and Fed.R.Evid. 702. (Transcript, Exh. 2, pp. 237-244, 267). Defendant's counsel had previously received extensive expert discovery from Dr. Kliman, including his interviews and testing of the Plaintiffs. Such deposition questions by Defendant's counsel were pointless and plainly not calculated to lead to competent, admissible evidence at trial.

There are many other examples that may be gleaned from the attached transcripts. Defendant's counsel asked repetitive questions regarding exact dates that various types of sexual conduct occurred during the course of numerous massages given to Epstein by Jane Doe No. 4 over an approximate two year period, badgering the Plaintiff when Jane Doe No. 4 could only

⁵ This line of questioning is the subject of a separate Motion for Protective Order to prevent Defendant's counsel from asking Plaintiff's parents leading questions about the abortions at her deposition. (DE 420).

⁶ Defendant's counsel also asked Plaintiff an inordinate number of repetitive, intimidating questions concerning the oath and her duty to tell the truth to police officers. (See Transcript, Exh. 1, pp. 7-10, 52-53).

recall generally the months that certain sexual conduct commenced during her junior year of high school. (Transcript, Exh. 2, pp. 143-153). Defendant's counsel asked Plaintiff a number of questions regarding how Epstein had treated the Plaintiff, and then later in the deposition asked virtually the identical series of questions again. (Compare Transcript, Exh. 2, pp. 163-177, with pp. 288-296).

The foregoing demonstrates that much of the deposition time consumed by Defendant's counsel was wasted with harassing, repetitive and badgering questions. An examination of the 446 existing pages of deposition transcripts reveals that Defendant's counsel does not require more than 7 hours to conduct a fair deposition of Plaintiff.

IV. Argument

A. THE MAGISTRATE JUDGE'S ORDER IS CONTRARY TO LAW

The Magistrate Judge's decision to grant Defendant Epstein a second day of deposition of Jane Doe No. 4, for an additional four hours, is contrary to law. The error is apparent in the following portion of the Court's decision:

Epstein contends the Court's May 14, 2009 Consolidation Order, which provides that "Local Rule 26.1K (limiting deposition time to one day of seven hours) is waived so as to allow each party an adequate opportunity to develop fully the record as it may relate to that party," effectively waives L.R. 26.1K's limitation on the length of a deposition, thereby relieving Epstein from the seven hour deposition limit. The Court need not reach this issue, however, in that Epstein has provided sufficient and reasonable grounds in his Response Memorandum to sustain his burden, *to the extent it is his burden*, of showing additional time to depose Jane Doe and Jane Doe 4 is needed, to fully and fairly prepare his defense.

(Omnibus Order (DE 413), p. 3) (emphasis supplied). Initially, as noted in the highlighted language above, the Magistrate Judge is equivocal on the issue of whether it is Epstein's burden to show cause for a deposition exceeding 7 hours. Yet the Advisory Committee's Note to

Fed.R.Civ.P. p. 30 makes clear that “[t]he party seeking a court order to extend the examination . . . is expected to show good cause to justify such an order.” Fed.R.Civ.P. 30(d) Advisory Committee’s Note (2000 Amendment) (emphasis supplied). Rule 30(d)(1) establishes the “presumptive duration” of a deposition as 7 hours. See Home Design Services, Inc. v. W. Gargas Constr., Inc., 2009 WL 3190462 (N.D. Fla. 2009). It is incumbent upon the party seeking a longer deposition to move the court for additional time and show cause. Here, the Court erroneously found sufficient cause in the Defendant’s *Response Memorandum* to Plaintiff’s Motion for Protective Order.

B. THE MAGISTRATE JUDGE’S FINDINGS ARE NOT SUPPORTED BY THE RECORD, INCONSISTENT WITH THE TRANSCRIPTS OF JANE DOE NO. 4’S DEPOSITION, AND THUS CLEARLY ERRONEOUS

The Court’s finding of cause is clearly erroneous. The first ground stated by the Magistrate Judge to support substantial added deposition time of Jane Doe No. 4 is that Plaintiffs are “seeking millions of dollars.” This ground has been stated by the Magistrate Judge in rejecting, in their entirety, the prior attempts by Plaintiffs to place limits on the Defendant’s abusive discovery conduct. (See DE 299 (Order dated September 15, 2009, denying Plaintiffs’ Motion for Protective Order on conduct of Epstein’s investigators, p. 5); DE 377 (Omnibus Order dated October 28, 2009, granting Defendant’s Motion to Compel Answers to Interrogatories and Request for Production regarding Plaintiffs’ sexual histories, p. 4)). Yet the Magistrate Judge has not in any of these instances articulated why the Plaintiffs’ seeking millions of dollars warrants granting the Defendant *carte blanche* in discovery, thereby facilitating Defendant’s thinly veiled strategy to harass, badger, embarrass and humiliate the Plaintiffs. Indeed, the Magistrate Judge never mentions that Epstein is a reputed billionaire. While a plaintiff’s demand for millions of dollars would in the typical case threaten the financial well

being of the defendant, this is not the typical case. Every indication is that the “millions of dollars” sought by Defendant’s sex abuse victims are, or at least could be, a trivial sum to Defendant Epstein.⁷

The Magistrate Judge in the Omnibus Order states additional reasons for granting Defendant four additional hours of deposition of Jane Doe No. 4, including the need to ask questions about: (1) Jane Doe No. 4’s alleged drug use; (2) repeated instances of domestic violence; (3) multiple aborted pregnancies; (4) arrests; and (5) details regarding her past sexual history. (Omnibus Order, p. 4). With regard to topics (1) through (4), a review of the 446 pages of existing deposition transcripts reveals that *Jane Doe No. 4 has already been questioned extensively on each of these topics.*⁸ As to past sexual history, Jane Doe No. 4 pursuant to Court Order has recently answered interrogatories detailing her past sexual history. The instances in which Jane Doe No. 4, on her counsel’s advice, refused to answer questions at deposition regarding her sexual history are *de minimus*. (See Exh. 1 p. 5, Exh. 2, p. 182, Exh. 3, pp. 314-317, 368). Indeed, she answered at her deposition most of questions concerning her sexual history with men other than Epstein. (See, e.g., Transcript, Exh. 3, pp. 323-350, 354-355). Any remaining questions regarding Jane Doe No. 4’s sexual history can easily and fairly be covered

⁷ It should also be noted that Plaintiffs seek millions of dollars inclusive of punitive damages. The discovery sought by Defendant through the deposition of Jane Doe No. 4 is not pertinent to the issue of punitive damages, which focuses on the willful and wanton acts of Epstein in sexually molesting teenage girls.

⁸ See the following portions of the attached transcripts:

- a. alleged drug use (Exh. 1, pp. 86-88, Exh. 2, pp. 213-223).
- b. instances of domestic violence (Exh. 1, pp. 26-32, Exh. 2, pp. 200-206, Exh. 3, pp. 349-359, 425).
- c. aborted pregnancies (Exh. 2, pp. 301-307, Exh. 3, pp. 311-318, 426).
- d. arrests (Exh. 1, pp. 25-26, Exh. 3, pp. 338-349).

in the 1 hour and 25 minutes of additional deposition time Plaintiff has agreed to provide to Defendant's counsel.⁹

The Magistrate Judge issued a clearly erroneous decision in large part because she did not have the benefit of the complete 446-page transcript of Jane Doe No. 4's deposition at the time she made her ruling. She did not have the benefit of the transcript because she ruled prematurely, before Plaintiffs' counsel had an opportunity to reply to Defendant's Response or to file the complete transcript. In this instance, a careful review of the transcript is necessary in determining whether additional time is necessary for a fair deposition of Jane Doe No. 4. Instead, the Magistrate Judge's decision was premised on an inaccurate characterization of the existing deposition record and the topics yet to be covered, which Plaintiff's counsel could have corrected and clarified in the Reply prior to the Magistrate Judge's decision, if afforded the time to do so provided under S.D. Fla.L.R. 7.1(C).

To make matters worse, the Magistrate Judge ordered that Defendant's counsel have up to four additional hours deposition time of Jane Doe No. 4, without restriction or qualification. In contrast, this Court's Order Consolidating Cases dated May 14, 2009 (DE 98) expressly notes that the waiver of the 7-hour limit set forth therein¹⁰ "shall not be construed as authority for any party to take unnecessarily long depositions, or abuse the process." (Order, p. 4, ¶ 8). No such admonition is present in the Magistrate Judge's Order.

The Magistrate Judge ultimately makes the following finding:

The Court agrees with Epstein that all of the foregoing issues are directly relevant to Plaintiffs' damage claims and credibility, and to deny him additional time in which to depose these Plaintiffs

⁹ This will provide Defendant's counsel with an aggregate 7 hours of deposition time.

¹⁰ As discussed above, Plaintiffs believe that the waiver of the 7-hour rule set forth in that Order does not authorize the Defendant to take a deposition of a Plaintiff in excess of 7 hours.

would be unreasonable under the circumstances and result in prejudice to Epstein by denying him the opportunity to obtain discovery that is central to his defense.

(Omnibus Order (DE 413), pp. 4-5). As discussed above, Defendant has submitted *nothing* in the record to support the conclusion that he will be prejudiced or denied the opportunity to obtain discovery that is central to his defense. To the contrary, a review of the transcripts of Jane Doe No. 4's deposition emphatically demonstrates that this finding is wrong. The Magistrate Judge's Order is thus clearly erroneous.

In support of the Order, the Magistrate Judge relies upon Osbourne v. Columbia Helicopters, Inc., 2009 WL 2215076 (S.D. W. Va. 2009). (See Omnibus Order, p. 5). Osbourne was a employment case in which the Court permitted the plaintiff's deposition to exceed 7 hours because plaintiff "submitted unverified, incomplete and inaccurate responses to [defendant's] written discovery." Id. at *5. Here, in contrast, Plaintiffs have not been evasive in discovery. Defendant has not only received written discovery responses from Plaintiff, but extensive discovery from Plaintiff's psychiatric expert, Dr. Gilbert Kliman, and an 8-hour independent medical examination of the Plaintiff. An objection was made by Plaintiff to detailed written discovery requests on Plaintiff's sexual history with men other than Epstein. The Plaintiff's objection on this narrow issue was decided by the Magistrate Judge in favor of Epstein, who granted Epstein's Motion to Compel in its entirety (DE 377) shortly after the deposition of Jane Doe No. 4 took place on October 27, 2009.¹¹ Nonetheless, contrary to the Magistrate Judge's

¹¹ As discussed above, the instances in which Jane Doe No. 4 was instructed not to answer questions based on the then undecided issue of discovery of Plaintiff's sexual history were *de minimus*, and do not support an extended deposition of Jane Doe No. 4. Additionally, subsequent to the deposition, Plaintiff answered Defendant's written discovery requests on the subject of her sexual history in accordance with the Magistrate Judge's Order.

finding, any lack of discovery on the issue of sexual history does not support an additional four hours of deposition of Jane Doe No. 4. Indeed, it may be anticipated that Epstein's counsel will use this additional time for abusive questioning on Jane Doe No. 4's sexual history.¹²

Finally, it should be noted that this is not a document driven commercial or employment case, where the need for a lengthy deposition of a party may be supported with cause. See Dunkin Donuts, Inc. v. Mary's Donuts, Inc., 206 F.R.D. 518, 522 (S.D.Fla. 2002), (allowing the plaintiff to depose the defendant's accountant and corporate representative for an additional seven hours because it was a complex commercial case involving seven years of commercial activity and 10,000 pages of documents). See also Pace v. City of Palmetto, 2007 WL 470477 (S.D.Fla. 2007) (granting one hour additional deposition time because the deponent had not read documents in advance, and was taking an inordinate amount of time during the deposition to read documents). In such a case, it may be anticipated that there will be little if any prejudice or damage to the party witness created by a lengthy deposition exceeding one day. In stark contrast, the depositions of the Plaintiffs in these cases covers the most intimate and private details of their lives. Particularly given the harassing and badgering questioning engaged in by Defendant's counsel, a two day deposition will needlessly revictimize, embarrass and humiliate the Plaintiffs, which is the apparent strategy of Defendant in these cases.

V. Conclusion

For the reasons set forth above, Plaintiff Jane Doe No. 4 respectfully requests that the Magistrate Judge's Omnibus Order (DE 413) be reversed as it pertains to the amount of time

¹² See, e.g., Transcript, Exh. 2, pp. 181-182 where Defendant's counsel asks Plaintiff if her former boyfriend "had taken his penis and inserted it in your vagina", and whether she had given him oral sex. He later in the deposition asked her *again*, regarding the same boyfriend, "when was the first time you gave him oral sex", and "when was the first time he stuck his penis in you and ejaculated." Transcript, Exh. 3, p. 355.

remaining for Jane Doe No. 4's deposition; that Defendant's counsel be limited to an additional one hour and 25 minutes of deposition time for Jane Doe No. 4; that Defendant's counsel be admonished to refrain from abusive deposition conduct pursuant to S.D.Fla.L.R. 30.1(A)(5); and that Plaintiff be granted such other and further relief as this Court deems just and proper.

Dated: December 1, 2009

Respectfully submitted,

By: s/ Stuart S. Mermelstein
Stuart S. Mermelstein (FL Bar No. [REDACTED] 5)
[REDACTED]
Adam D. Horowitz (FL Bar No. 576980)
[REDACTED]
MERMELSTEIN & HOROWITZ, P.A.
Attorneys for Plaintiffs Jane Doe Nos. 2-8
[REDACTED]

SERVICE LIST
DOE vs. JEFFREY EPSTEIN
United States District Court, Southern District of Florida

Jack Alan Goldberger, Esq.
[REDACTED]

Robert D. Critton, Esq.
[REDACTED]

Bradley James Edwards
[REDACTED]

Isidro Manuel Garcia
[REDACTED]

Jack Patrick Hill
[REDACTED]

Katherine Warthen Ezell
[REDACTED]

Michael James Pike
[REDACTED]

Paul G. Cassell
[REDACTED]

Richard Horace Willits
[REDACTED]

Robert C. Josefsberg
[REDACTED]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 08-CIV-80119-MARRA/JOHNSON

JANE DOE NO. 2,

Plaintiff,

vs.

JEFFREY EPSTEIN,

Defendant.

Related cases:

08-80232, 08-80380, 08-80381, 08-80994,
08-80993, 08-80811, 08-80893, 09-80469,
09-80591, 09-80656, 09-80802, 09-81092

OMNIBUS ORDER

THIS CAUSE is before the Court on the following motions: (1) Plaintiff Jane Doe's Motion for Protective Order Barring Second Deposition and for Sanctions (D.E. #378); and, (2) Plaintiff Jane Doe No. 4's Motion for Protective Order Re Second Day of Deposition (D.E. #392). For the following reasons said Motions are granted in part and denied in part in accordance with the terms herein.

In this case, which has been consolidated for purposes of discovery, Plaintiffs are former under-age girls who allege they were sexually assaulted by Defendant, Jeffrey Epstein ("Epstein"), at his Palm Beach mansion home. The scheme is alleged to have taken place over the course of several years in or around 2004-2005, when the girls in question were approximately 16 years of age. As part of this scheme, Epstein, with the



help of his assistant [REDACTED], allegedly lured economically disadvantaged minor girls to his homes in Palm beach, New York and St. Thomas, with the promise of money in exchange for a massage. Epstein purportedly transformed the massage into a sexual assault. The three-count Complaint alleges sexual assault and battery (Count I), intentional infliction of emotional distress (Count II), and, coercion and enticement to sexual activity in violation of 18 U.S.C. §2422 (Count III).

The instant Motions are nearly identical and seek, as to each respective Plaintiff, Jane Doe in the case of D.E. #378 and Jane Doe 4 in the case of D.E. #392, protection/limitation from having to appear at a second deposition. Jane Doe was deposed on September 20, 2009 for a total of anywhere between just under 7 hours to 8 hours. Jane Doe 4 was deposed on October 27, 2009, and the parties are in agreement that taking into account breaks, the deposition lasted 5 hours and 35 minutes. Plaintiffs contend that under Fed. R. Civ. P. 30(d)(1), S.D. Fla. L.R. 26.1(K), and the Court's Consolidation Order (D.E. #98), all of which limit a deposition of an individual to a single day of seven hours unless leave of Court is granted, it is Defendant's burden to demonstrate why more than seven hours of deposition time is necessary for a particular Plaintiff. According to Plaintiff, Epstein has failed to sustain his burden in this regard and, as such, he should not be able to re-depose Jane Doe at all², and should only be able to re-depose Jane Doe 4

¹ In her Motion, Jane Doe represents that she was deposed for 8 hours. For his part, Defendant Epstein contends in his Response in Opposition that taking into account lunch and other breaks, the actual figure is 6 hours and 50 minutes, which figure he contends was confirmed with the court reporter. The Court finds that whether Jane Doe was deposed for just under 7 hours as Epstein contends, or for 8 hours as Jane Doe alleges, is under the circumstances herein presented, of no consequence.

² This is based on Plaintiffs' representation that Jane Doe's deposition lasted 8 hours.

for an additional 1 hour and 25 minutes, providing Epstein with an aggregate of 7 hours deposition time of Jane Doe 4.

Epstein contends the Court's May 14, 2009 Consolidation Order, which provides that "Local Rule 26.1K (limiting deposition time to one day of seven hours) is waived so as to allow each party an adequate opportunity to develop fully the record as it may relate to that party," effectively waives L.R. 26.1K's limitation on the length of a deposition, thereby relieving Epstein from the seven hour deposition limit. The Court disagrees with Epstein's interpretation of the District Court's Order and finds that Fed.R.Civ.P. 30(d)(1) and S.D.Fla.L.R. 26.1(K) which, absent agreement or court order, presumptively limits depositions to 7 hours, applies in this case. That said, the undersigned finds that Epstein has provided sufficient and reasonable grounds in his Response Memorandum to sustain his burden under the Rules of showing additional time to depose Jane Doe and Jane Doe 4 is needed to fully and fairly prepare his defense.

Plaintiffs are seeking millions of dollars in personal injury damages for, among other things, physical injury, pain and suffering, emotional distress, psychological trauma, mental anguish, humiliation, embarrassment, loss of self-esteem, loss of dignity, and invasion of privacy. Epstein's counsel represents he will need an additional 2 ½ to 3 hours to depose Jane Doe, so that he can cover such topics as background information not disclosed in answers to interrogatories, family background information, details regarding Jane Doe's visits to Epstein's home, Jane Doe's knowledge of other witnesses, school records and medical records, and finally, details regarding her past sexual history, an opportunity he did not have when he began her deposition as the Court had not yet ruled on Epstein's Motion to Compel (D.E. #s 67 & 68), which sought information related to Plaintiff's past

sexual history.

As for Jane Doe 4, Epstein's counsel represents he will need approximately an additional 4 hours to complete her deposition, owing to her "complicated and eventful past history" including alleged drug use, repeated instances of domestic violence, multiple aborted pregnancies and arrests. Def's Resp., p. 2. Also, as with Jane Doe, Epstein's counsel claims he needs additional time to depose Jane Doe 4 on details regarding her past sexual history, an opportunity he did not have when he began her deposition as the Court had not yet ruled on Epstein's Motion to Compel (D.E. #s 67 & 68), which sought information related to Plaintiff's past sexual history. All agree that there were instances at Jane Doe 4's initial deposition where she was instructed by her counsel not to answer questions "relat[ed] to sexual partners' names or sexual positions." Jane Doe 4 Deposition Excerpt, attached as Ex. "B" to Def's Resp., at 5. With these subjects fairly open to inquiry, it is only reasonable that Epstein's counsel will require additional time to depose Jane Doe and Jane Doe 4 on these areas.

The Court agrees with Epstein that all of the foregoing issues are directly relevant to Plaintiffs' damage claims and credibility, and to deny him additional time in which to depose these Plaintiffs would be unreasonable under the circumstances and result in prejudice to Epstein by denying him the opportunity to obtain discovery that is central to his defense. See Osborne v. Columbia Helicopters, Inc., 2009 WL 2215076 (S.D. W.Va. 2009)(granting the defendant an additional one day of 7 hours to depose the plaintiff, reasoning that because the plaintiff provided incomplete written discovery responses, the defendant "did not have full opportunity to examine Mr. Osborne respecting all of the information which might properly be considered in his discovery deposition.").

Nonetheless, with the Court now having the benefit of the 446 page, three-volume deposition transcript, a copy of which is attached to Plaintiffs' Appeal of Magistrate Judge Decision (D.E. #430), the Court finds the 4 additional hours requested by Defendant to depose Jane Doe 4 unreasonable under the circumstances. A review of the deposition transcript reveals numerous instances of Jane Doe 4 being subjected to repetitive questioning about exceedingly sensitive issues such as the emotional pain caused by having three abortions, the sexual positions she has engaged in, and Epstein's treatment of her. To re-phrase Plaintiffs' counsel's words³, while it may be appropriate to ask a plaintiff in a personal injury case a question about whether having abortions caused her emotional distress, when the essentially identical question is re-phrased and asked over and over again, the questioning becomes badgering and harassing. Counsel for Defendant must be mindful that the depositions of the Plaintiffs in these cases covers the most intimate and private details of their lives and if not handled correctly may serve to needlessly revictimize, embarrass and humiliate them.

In order to avoid this result, in all future depositions of the Plaintiffs in these cases, including the re-depositions of Jane Doe and Jane Doe 4, Defendant's counsel is ordered to refrain from repetitive questioning. This does not mean that Defense counsel may not follow-up on questions asked or ask similar questions of a related nature, but counsel is expected to conduct himself in a responsible and professional manner befitting members of the Bar and balance the need for the information sought against the psychological trauma that could result from repetitive, humiliating questions regarding the sensitive

³ See Plaintiffs' Appeal of Magistrate's Order (D.E. #430), p.6-7.

issues at play in this case.

As for the time permitted defense counsel to re-depose these Plaintiffs, the Court finds that any remaining questions regarding Jane Doe 4 or Jane Doe 4's sexual history can fairly and reasonably be covered in 2 hours, rather than the 4 hours requested, and that any remaining questions regarding Jane Doe or Jane Doe's sexual history can fairly and reasonably be covered in the requested 3 hours. The Court's allowance of this additional time should not be construed by defense counsel as authority to take the depositions of these Plaintiffs for any longer time than is necessary, and in no event will the Court tolerate questioning of an abusive nature. In accordance with the above and foregoing, it is hereby

ORDERED AND ADJUDGED that Plaintiff Jane Doe's Motion for Protective Order Barring Second Deposition and for Sanctions (D.E. #378); and Plaintiff Jane Doe No. 4's Motion for Protective Order Re Second Day of Deposition (D.E. #392) are **GRANTED IN PART AND DENIED IN PART** in accordance with the terms of this Order. Epstein's counsel is hereby given leave to re-depose Jane Doe for up to 3 additional hours and hereby given leave to re-depose Jane Doe 4 for up to 2 additional hours. Counsel for the parties are ordered to immediately confer and come to mutual agreement on a date and time in which these depositions can be continued sometime within two (2) weeks from the date hereof, unless otherwise agreed to by the parties. Plaintiffs' request for sanctions is denied.

DONE AND ORDERED this December 3, 2009, in Chambers, at West Palm Beach, Florida.



LINNEA R. JOHNSON
UNITED STATES MAGISTRATE JUDGE

CC: The Honorable 
All Counsel of Record