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January 15, 2020

VIA ECF

The Honorable Katherine Polk Failla
United States District Court
Southern District of New York
Thurgood Marshall United States Courthouse
40 Foley Square
New York, NY 10007

The Honorable Debra Freeman
United States District Court
Southern District of New York
Daniel Patrick Moynihan Courthouse
500 Pearl Street
New York, NY 10007

Re: Doe v. Indyke et al., No. 19-cv-8673-KPF (S.D.N.Y.)

Dear Judges Failla and Freeman:

We represent Plaintiff Jane Doe in the above-captioned action. We write to respond to the letter submitted by Defendants on January 12, 2020 (Doc. No. 43), and to respectfully request that the Court enter the joint proposed discovery schedule in this case (Doc. No. 42-1), which will allow the parties to begin discovery before the conference that has been scheduled for February 11, 2020, at which time, of course, the Court may modify the schedule if it sees fit to do so for any reason.

First, Defendants' letter typifies their relentless efforts to deflect plaintiffs' legitimate questions about how much money is in the Estate and how much the proposed Victim's Compensation Program (the "Program") will have access to. Defendants, through their counsel in this litigation and through the selected Program Administrators, have repeatedly asked plaintiffs to blindly accept their assurances that the Program will be allocated sufficient money to settle all claims and will be "open-ended" regarded amounts awarded. (*See, e.g.,* Doc. No. 42 at 2; Doc. No. 42-4 at 2; Doc. No. 42-5 at 1.) But, as President Reagan is famous for saying, "Trust, but verify." Here, Defendants have repeatedly refused to provide the factual basis for these assurances. This time, they suggest that they cannot answer these questions because "only

[Roberta] Kaplan and plaintiffs' counsel know the number of other individuals who intend to file additional claims, as well as the nature and scope of those claims." This assertion is, obviously, factually inaccurate, but it is also irrelevant: the number of claims that will be filed through the Program is a distinct question from the amount of money that is available to settle those claims.

In their letter, Defendants argue that Plaintiff's "fixation on the total amount available in the Program is misguided." This could not be further from the truth. The amount of money available in the Program is critical to Plaintiff's ability to assess whether the Program is viable. *This concern is underlined by a Complaint filed against the Estate only today by the Attorney General for the Virgin Islands, which seeks, among other things, forfeiture of Estate assets and compensatory, punitive, and treble damages against the Estate.* (Ex. A at 48.) The Complaint specifically addresses the Program, describing it as a continuation of the Estate's "course of conduct aimed at concealing the criminal activities of the Epstein Enterprise . . . and shield[ing] its participants from liability and accountability." (*Id*., at 18.) The New York Times reports that this lawsuit "seeks to head off an effort by Mr. Epstein's executor, Mr. Indyke, to turn Mr. Epstein's vast wealth into a victim's compensatory fund."[1] Particularly in light of these recent developments, plaintiffs deserve to know whether the Program is viable before they decide to participate, and this Court deserves to know whether Defendants are negotiating in good faith.

Second, with regard to the status of discovery, Plaintiff respectfully requests that she be allowed to move forward. The sixteen cases currently pending against the Estate of Jeffrey Epstein in the Southern District of New York are all in very different stages of litigation. Two cases have already been stayed by agreement of the parties. *Doe 1 et al v. Jeffrey Epstein et al.*, 19-cv-07675-GBD-DCF (S.D.N.Y.); *Doe 17 v. Indyke et al.*, 19-cv-09610-PAE-DCF (S.D.N.Y.). One was filed recently, on December 27, 2019. *Anastasia Doe* v. *Indyke et al*. 19-cv-11869 (AJN). In twelve of the remaining thirteen cases, there are pending motions to dismiss challenging the adequacy of the plaintiffs' substantive claims and/or allegations. In those twelve cases, the parties mutually agreed to postpone the commencement of discovery for at least another month.[2]

Plaintiff's case is differently situated in significant respects. None of the causes of action or allegations in Plaintiff's Complaint has been challenged as a matter of law: Defendants' anticipated motion to dismiss—which is more appropriately styled as a motion to strike under Fed. R. Civ. P. 12(f)—concerns only the availability of punitive damages, a single aspect of the relief sought by Plaintiff and not even (obviously) the only damages being sought. (Doc. No. 35.). There is a short briefing schedule in place for this motion and in the interim Judge Failla ordered that discovery in this case is not stayed. (*See* Doc. No. 39.) As described in Plaintiff's status report, the scope of discovery in this case is narrow (Doc. No. 42) and, because

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[1] *Lawsuit Claims Epstein Trafficked Girls in Caribbean Until 2018*, NEW YORK TIMES, Jan. 15, 2020.

[2] *VE v. Nine East 71st Street et al*., No. 19-cv-07625 (AJN) (DF); *Katlyn Doe v. lndyke et al*., No. 19-cv-07771 (PKC) (DF); *Priscilla Doe v. Indyke et al*., No. 19-cv-07772 (ALC) (DF); *Lisa Doe v. lndyke et al*., No. 19-cv-07773 (ER) (DF); *Jane Doe v. Indyke et al*., No. 19-cv-08673 (KPF)(DF); *Farmer v. lndyke et al*., No. 19-cv-10475 (LGS)(DF); *Helm v. lndyke et al.*, No. 19-cv-10476 (PGG) (DF); *Bryant v. Indyke et al*., No. 19-cv-10479 (ALC) (DF); *Jane Doe 1000 v. Indyke et al*., No. 19-cv-10577 (LGS) (DF); *Jane Doe 15 v. Indyke et al.*, No. 19-cv-10653 (PAE) (DF); *Mary Doe v. lndyke et al*., No. 19-cv-10758 (PAE) (DF); *Davies v. Indyke et al.*, No. 19-cv-10788 (GHW) (DF); *Anastasia Doe v. Indyke et al.*, No. 19-cv-11869 (AJN) (DF).

Defendants' motion does not relate to any of the defendants or causes of action in Plaintiff's complaint, will not be influenced by the pending motion practice.

Accordingly, the parties in this case have met and conferred and have agreed on a proposed discovery schedule, which was submitted to Judge Freeman for approval on January 10, 2020. (Doc. No. 42-1.) Yesterday, Judge Freeman entered an Order scheduling a pretrial conference for February 11, 2020, and instructing the parties to the other twelve cases covered by the Order to submit a proposed discovery schedule before then. (Doc. No. 44.) As the parties in the other twelve cases make those submissions in advance of the conference, Plaintiff here respectfully requests that the Court enter the joint proposed discovery order already submitted in this case (Doc. No. 42-1), so that discovery may begin, consistent with Judge Failla's order that discovery is not stayed. Of course, Plaintiff will then attend the conference scheduled for February 11, 2020, and, as the Court has requested, will be prepared to address the question of whether the pending cases should be treated differently for scheduling purposes. At that time, of course, the Court may modify the discovery schedule in this case, should it see fit to do so. Plaintiff merely asks that she be allowed to move forward in the interim according to the agreed schedule submitted by both parties.

Respectfully submitted,

Roberta A. Kaplan

cc: Counsel of Record (via ECF)