UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

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

JANE DOE NO. 2,

Plaintiff,

v.

JEFFREY EPSTEIN,

Defendant.
_____/

Related Cases:
08-80232, 08-80380, 08-80381, 08-80994,
08-80993, 08-80811, 08-80893, 09-80469,
09-80581, 09-80656, 09-80802, 09-81092.
_____/

DEFENDANT EPSTEIN'S RESPONSE IN OPPOSITION TO PLAINTIFF JANE DOE NO. 4'S MOTION FOR SANCTIONS AND MOTION FOR PROTECTIVE ORDER, WITH INCORPORATED MEMORANDUM OF LAW

Defendant, Jeffrey Epstein, ("Epstein") by and through his undersigned counsel, serves his Response In Opposition to Plaintiff Jane Doe No. 4's Motion for Sanctions and Motion for Protective Order, With Incorporated Memorandum of Law In support, Epstein states:

I. Introduction

1. Prior to the above-referenced Plaintiff's Motion (DE 306), the Defendant, Jeffrey Epstein, served his Motion for Sanctions and to Compel Discovery of Jane Doe No. 4 and Memorandum in Support thereof (DE 305). See attached **Exhibit "1"** hereto. Defendant adopts and alleges his entire argument in said motion in support of his opposition to Jane Doe No. 4's Motion. However, it is at least important to restate portions of that motion herein. The purpose of Plaintiff's Motion is to, among other things, prevent Jeffrey Epstein from attending the

depositions of the Plaintiff's in this matter and other related matters and to sanction Epstein and find him in violation of certain No-Contact Orders for an unexpected event that occurred on September 14, 2009 wherein Epstein was exiting a building where a deposition was set to occur and unexpectedly crossed paths with Jane Doe #4 while she was accompanied by her attorneys. The remainder of the Motion attached as Exhibit "1" speaks for itself, in particular the portion of that Motion which deals specifically with the attorneys' agreement that Epstein would not appear at Jane Doe #4's deposition until the court ruled on various outstanding motions addressing same.

(a) The No-Contact Orders

2. The No-Contact Orders are attached as **Exhibits "2" and "3"**. As the Court will recognize, the relevant parts of the No-Contact Orders do not specifically state that Epstein cannot attend the depositions of the Plaintiffs that have initiated lawsuits against him seeking millions of dollars. Jane Doe #4 seeks 15 million dollars in damages in the lawsuit she filed against Epstein.

3. In fact, Plaintiffs universally agreed at the June 12, 2009 hearing on Defendant's Motion to Stay that regular discovery could proceed. See **Composite Exhibit "4"** 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).
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> ***
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> **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)

4. It is clear from the transcript attached as Exhibit "4" that each of the Plaintiffs' attorneys, including Mr. Horowitz for Jane Does 2-8, expected and conceded that regular/traditional discovery would take place (i.e., discovery, motion practice, depositions, requests for records, and investigations). Moreover, Epstein has a constitutional due process right to confront these witnesses, including Jane Doe #4. The purpose of the notice rule found under Fla.R.Civ.Pro. 1.310(b)(1) is clear: a party has the right to attend and cross-examine all witnesses with information relevant to the litigation. The same applies to Fed.R.Civ.Pro. 30. In fact, the Court has already ruled (DE 299) that Epstein has a right to mount a defense under the Sixth Amendment right to confront witnesses and under the due process clause of the Fifth and Fourteenth Amendments to the United States Constitution. Moreover, the court recognized that the threat of criminal prosecution is real and present as Epstein remains under the scrutiny of the United States Attorney's Office ("USAO"), which is explained and acknowledged in the Court's Order (DE 242). Recognizing the foregoing, the court has rightfully acknowledged Epstein's due process rights to defend himself and his constitutional rights to confront witnesses. Thus,

Epstein has a Sixth Amendment right to attend the depositions under the Confrontation Clause of the federal Constitution. Christian v. Rhode, 41 F.3d 461, 465-66 (C.A. Ariz. 1994). See also, Coy v. Iowa, 487 U.S. 1012, 1015, 108 S.Ct. 2798, 2800, 101 L.Ed.2d 857 (1988). The Clause "guarantees the defendant a face-to-face meeting with witnesses appearing before the trier of fact." Id. at 1016, 108 S.Ct. at 2801. This physical confrontation "enhances the accuracy of fact finding by reducing the risk that a witness will wrongfully implicate an innocent person." Maryland v. Craig, 497 U.S. 836, 846, 110 S.Ct. 3157, 3164, 111 L.Ed.2d 666 (1990); see also Coy, 487 U.S. at 1019, 108 S.Ct. at 2802 ("A witness 'may feel quite differently when he has to repeat his story looking at the man whom he will harm greatly by distorting or mistaking the facts.' ") (quoting Z. Chafee, The Blessings of Liberty 35 (1956)). The Confrontation Clause thus gives the defendant the right to be present and to confront witnesses giving testimony during a pretrial deposition, where the deposition is intended for use at trial. Don v. Nix, 886 F.2d 203 (8th Cir.1989); United States v. Benfield, 593 F.2d 815 (8th Cir.1979). Importantly, there are no minor Plaintiffs in this matter or the related matters. All are of age.

5. Moroever, 1 McCormick on Evid., §19 (6th ed.) states, in pertinent part, that: "[f]or two centuries, common law judges and lawyers have regarded the opportunity of cross-examination as an essential safeguard of the accuracy and completeness of testimony. They have insisted that the opportunity is a right, not a mere privilege. This right is available at the taking of depositions as well as during the examination of witnesses at trial." Accordingly, Plaintiff's request that Epstein be prevented from attending her deposition and that a special master be appointed should be denied. See Anderson v. Snyder, 91 Conn. 404, 408, 99 A. 1032 (1917); Helfferich v. Farley, 36 Conn.Sup. 333, 334, 419 A.2d 913 (1980). If this Court excludes Defendant from deposition, Plaintiff's deposition testimony could be stricken from the record

and Plaintiff could be prevented from testifying at trial, especially if Plaintiff's position is that Epstein cannot be present at said trial based upon her loose interpretation of the No-Contact Orders? This would afford her attorneys an opportunity to point at an empty chair? These are court proceedings that Plaintiff instituted and, therefore, she cannot prevent Epstein's access to the court(s) under the cloak of her allegations.

6. As another example, assume a Plaintiff obtains a temporary restraining order ("TRO") on a Defendant or a final judgment of injunction against domestic violence ("IADV") that specifically prevents Defendant from coming into contact with Plaintiff. Plaintiff cannot utilize the TRO or the IADV to prevent Defendant from attending court proceedings. See Pope v. Pope, 901 So.2d 352 (Fla. 1st DCA 2005). In fact, under Fla. Stat. §741.31 a violation of a IADV must be "willful," and the statute does not address court proceedings as part of any such willful violation because that would obviously violate a Defendant's right to access the courts, the right to be heard and other fundamental due process rights.

7. In cases where a final restraining order is in effect, factors to be considered in assessing need to exclude or limit a party's participation in a deposition in a pending matrimonial action include: (1) history of domestic violence, including physical abuse, threats, and harassment; (2) violations of restraining order; (3) past disregard of judicial process by party sought to be excluded; (4) anticipation of misconduct during deposition, which would harass, alarm or frighten party being deposed; (5) party's fear of party sought to be excluded; (6) mental and emotional health of parties; (7) general security concerns for safety of party being deposed; (8) good faith of party being deposed in asking to exclude other party; and (9) any other factor deemed relevant by court. Mugrage v. Mugrage, 763 A.2d 347, 349-352 (N.J. 2000)(even when it is not appropriate to exclude the other party from the protected party's deposition, a protective

order can be crafted which would allow the other party to be present under the least restrictive conditions possible). In Mugrage, "[a]lthough [the wife was] in fear of [her husband], and [was] in good faith in asking that he be excluded, and even though she ha[d] been the victim of domestic violence in the past, as well as protected by an existing order, the court conclude[d] that Mr. Mugrage ha[d] respected the judicial process in the past and almost certainly [would] abide by the terms of any court order regulating his attendance at the deposition. He has not violated past court orders and the court conclude[d] that security concerns for her safety can be addressed in a carefully crafted protective order. Therefore, Ms. Mugrage [did] not establish[] sufficient "exceptional circumstances" to justify excluding Mr. Mugrage from her deposition in the matrimonial action." Id. at 352.

8. Here, this court could craft an order without taking exceptional steps to exclude Epstein from deposition, including having the deposition at the Palm Beach County Courthouse, no speaking out load by Defendant directly to Plaintiff, Defendant may confer with his counsel, seat positioning, arrival and departure times. See Id. (conditions imposed in Mugrage).

9. Here, Plaintiff has not met her burden establishing exceptional circumstances to preclude Epstein from attending her deposition. See Ferrigno v. Yoder, 495 so.2d 886, 887-888 (Fla. 2d DCA 1986)(the rules do not contemplate use as a means of by which one party may gain a tactical advantage - the right of a party to be in attendance at deposition is "sacrosanct".)

(b) **Plaintiff's Disingenuous Arguments**

10. Plaintiff makes the absurd and disingenuous argument in paragraph 1 "By now, this Court is familiar with Jeffrey Epstein's practice of intimidating and harassing his victims as well as the Plaintiffs' level of fear of Jeffrey Epstein"; and then goes on to cite four different motions all filed by Plaintiffs' attorneys, none of which assert that Epstein has undertaken any

action in the civil cases that was not discussed with and approved by all Plaintiffs' attorneys (including Maria Villafana, USAO) at the June 12, 2009 hearing with Judge Marra and as set forth in the transcript (*supra*); and also found to be appropriate as set forth in this Court's recent order (DE 299) denying Plaintiff's Motion for Protective Order (DE 226) regarding contact of third parties by private investigators retained by Defendant (DE 226 and 223 identical pleadings).

11. Again, in the recent order dealing with Plaintiffs' attempt to limit investigators (DE 299), the Court stated: "The Court agrees with Epstein in this instance and finds that limiting Epstein's investigation of the claims asserted against him in the manner as suggested strips from Epstein the ability to mount a defense and, as such, would violate Epstein's Sixth Amendment right to confront witnesses and the due process clause of the Fifth and Fourteenth Amendment. . . . To restrict Epstein in the manner described would result in Epstein having to rely only on those "handpicked" witnesses disclosed by Plaintiffs in discovery, and would thereby prejudice Epstein in mounting his defense to the claims raised against him." The Court went on to state in Footnote 4 "The Court notes that in reaching the conclusion, review and consideration was made of the various declarations filed by the Plaintiffs in support of their claim that Epstein's investigators were acting in ways which were harassing, humiliating to Plaintiffs and/or otherwise designed to intimidate and finds that allegations without foundation". Those declarations were made by Jane Does 4, 6 and 7.

12. Rather than allow discovery to take its normal course, the Plaintiffs in this case have attempted to control exactly what the Defendant is allowed to do and when he is allowed to do it. See ¶ 14 A – D of DE 296, Defendant's Emergency Motion To Strike Plaintiff's Motion For Protective Order (DE 292) And Emergency Motion To Allow The Attendance Of Jeffrey

Epstein At The Deposition Of Plaintiffs And Response In Opposition To Plaintiffs', Jane Doe Nos. 2-8, Motion For Protective Order As To Jeffrey Epstein's Attendance At The Deposition Of Plaintiffs.

13. The Plaintiffs almost universally have objected to past sexual history (whether consensual or by force such as molestation or rape), although Jane Does 2 through 7's psychiatrist expert Dr. Kliman, had Jane Does 2 through 7 complete detailed questionnaires including past sexual history and then interviewed them on tape about their past sexual history and its impact in the cases *sub judice.* These documents were subpoenaed; Defendant and his attorneys have reviewed them. Plaintiffs argue a different standard to apply to them versus the Defendant by virtue of their allegation in their respective complaints. However, at this juncture, they are just that – allegations.

14. Almost all of these Plaintiffs have significant past, psychological, psychiatric, sexual abuse (molestation, rape, etc.) as well as criminal arrest and/or convictions completely unrelated to Epstein. The Court entered an order (DE 289) specifically addressing these types of issues in addressing Defendant Epstein's Emergency Motion for Independent Medical Examination and Plaintiff (C.M.A.'s) attempt to limit the exam. The Court stated in that order "Plaintiff cites no case law and independent research has uncovered none, to support her novel position that a Plaintiff who puts her mental, emotional and psychiatric state at issue can place a limitation on the number of times defense counsel or agents retained by him can inquire into areas relevant to these issues where the subject matter involve is "highly personal," "embarrassing," "sensitive" or otherwise "humiliating."

15. Plaintiff is seeking $15,000,000 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)." The Court noted: " . . . . under these circumstances, where Plaintiff is seeking to recover medical expenses associated with these complex medical issues, full knowledge of Plaintiff's past and present medical, psychological, familial and social history is essential." The Court granted the Defendant's Emergency Motion for Independent Medical Exam in accordance with that order.

16. Additionally, Plaintiff, Carolyn Andriano, sought to limit the scope of her medical examination (as set forth in paragraph 5 above, and further sought to assert a "conditional reliance" so as to prevent any and all discovery related to her current and past medical and emotional state. (DE 113)(Case No.: 80811). This Court rejected the conditional reliance. (DE 272) (Case No.: 80119). Carolyn Andriano was set for deposition on September 3, 2009 and for an IME on September 8, 2009. However, based upon a medical condition that existed, both Plaintiff's counsel and defense counsel agreed to postpone both the deposition and the medical exam. Therefore that discovery has been delayed.

17. Now, Jane Doe No.4, just as all the other Jane Does, seek to prevent meaningful discovery in this case by the Defendant or to dictate to the Defendant and this Court how discovery should be conducted. Federal Rules of Civil Procedure be "damned". Plaintiffs want the Defendant to jump through all sorts of hoops in order for his attorneys to obtain routine discovery while they continue to try their cases in the media, which serves only to prejudice Epstein's right to receive a fair trial. Now, they wish to strip him of his constitutional and due process rights to defend these cases.

18. The Defendant is being required to defend these cases on Plaintiffs' terms, and only when this Court or the state court judge intercedes is the Defendant allowed to proceed with

what would be customary, reasonable, necessary and allowable discovery. This Defendant is being denied his constitutional right to confront his accuser(s). He is being denied fundamental discovery.

19. As stated in the Defendant's Emergency Motion to Strike the Plaintiff's Motion for Protective Order and the Emergency Motion to allow the Attendance of Jeffrey Epstein at the deposition of the Plaintiff (DE 296), which included the expert affidavit of Richard Hall, M.D., Jane Doe No. 4's alleged "emotional condition" after seeing Epstein is absurd. Jane Doe No. 4 was physically abused, including having her head smashed into the hood of the car and the window of a car, spit upon and verbally abused by her former long term boyfriend, Preston Vineyard. Yet she kept returning to him. There is no affidavit filed by Jane Doe No. 4. So this new found, contrived emotion is just that.

20. The Plaintiff's assertion that the court should appoint a special master to preside at the Plaintiff's deposition and control the proceedings and for the Defendant to pay the special master's fee is not only groundless, but is absurd. The Plaintiffs' attorneys continue to try this case against Mr. Epstein in the media. They are the grandstanders, the first ones with the comments, opinions and release of confidential information. Yet they seek anonymity for their clients, and complete control over discovery in this case. It is this Court which exercises and directs the parties how discovery will take place, not Jane Doe No. 4 or any other Jane Doe nor the Defendant.

WHEREFORE, Jeffrey Epstein moves this Court for an order denying Jane Doe No. 4's Motion for Sanctions and Motion for Protective Order and granting the Defendant's Motion for Sanctions and an order compelling the Deposition of Jane Doe No. 4 (DE 305).

Robert D. Critton, Jr.
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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 23 day of Sept, 2009.

Certificate of Service
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