

**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.

JANE DOE NO. 4,

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

Plaintiff,

vs.

JEFFREY EPSTEIN,

Defendant.

JANE DOE NO. 5,

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

Plaintiff,

vs.

JEFFREY EPSTEIN,

Defendant.

JANE DOE NO. 6,

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

Plaintiff,

vs.

JEFFREY EPSTEIN,

Defendant.

JANE DOE NO. 7,

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

Plaintiff,

vs.

JEFFREY EPSTEIN,

Defendant.

C.M.A.,

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

Plaintiff,

vs.

JEFFREY EPSTEIN,

Defendant.

JANE DOE,

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

Plaintiff,

vs.

JEFFREY EPSTEIN,

Defendant.

JANE DOE NO. II,

CASE NO.: 08-CV-80469-MARRA/JOHNSON

Plaintiff,

vs.

JEFFREY EPSTEIN,

Defendant.

JANE DOE NO. 101,

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

Plaintiff,

vs.

JEFFREY EPSTEIN,

Defendant.

JANE DOE NO. 102,

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

Plaintiff,

vs.

JEFFREY EPSTEIN,

Defendant.

JOINT SCHEDULING AND DISCOVERY REPORT
REGARDING JANE DOE 101 V. EPSTEIN
CASE NO.: 09-CV-80591-MARRA/JOHNSON

Plaintiff, Jane Doe 101, and Defendant, Jeffrey Epstein, conferred by telephone via their respective counsel on May 29, 2009, and submit this Joint Scheduling and Discovery Report in accordance with this Court's Order Requiring Counsel to Confer, File Joint Scheduling Report and File Joint Discovery Report and pursuant to Local Rule 16.1(B)(2) of the United States District Court for the Southern District of Florida, and Rule 26 (f) of the Federal Rules of Civil Procedure and state as follows:

I. JOINT DISCOVERY REPORT RE: JANE DOE 101

A. Disclosures Under Rule 26(a)

The parties propose to exchange initial disclosures under Fed.R.Civ.P. 26(a) on or before June 22, 2008.

B. Conduct of Discovery

1. Discovery and Pretrial Deadlines

The parties propose the following discovery and pre-trial deadlines. The Plaintiffs are set forth in the left hand column and the Defendants in the right hand column. Where there has been an agreement, the parties have identified the same date.

| | <u>Plaintiff's Proposed Dates</u> | <u>Defendant's Proposed Dates</u> |
|---|--|--|
| Joinder of parties and Amendment of pleadings | July 1, 2009 | September 1, 2009 |
| Parties to exchange list of fact witness and expert witness summaries/reports required by S.D.Fla.L.R. 16.1E | August 1, 2009 | January 12, 2010 |
| Mediation to be completed | Sept. 1, 2009 | February 8, 2010 |
| Completion of discovery | Dec. 1, 2009 | March 8, 2010 |

| | | |
|---|-------------------|----------------|
| Dispositive motions to be filed | January 15, 2010 | March 22, 2010 |
| Joint Pretrial Statement to be filed pursuant to S.D.Fla.L.R. 16.1E | February 15, 2010 | April 26, 2010 |
| Proposed pre-trial conference | March 15, 2010 | May 25, 2010 |
| Proposed trial | April 15, 2010 | June 25, 2010 |
| Number of days estimated for jury trial | 5 | 5-6 |

2. **Subjects of Discovery and Whether Discovery Should be Phased or Limited to Particular Issues**

Plaintiff's Position: At least one unusual issue at this time may require consideration of bifurcation or special restrictions on the scope of discovery or the subjects of discovery: the Plaintiff victim's ability to maintain her anonymity. Another issue that inevitably becomes important in each case as soon as discovery is underway is the matter of limits on discovery of past sexual history of the victims, all of whom were minors at the time Defendant sexually exploited them. These issues are being briefed, and their resolution will establish clearly understood and more workable parameters for the conduct of discovery. The Court's recent order imposing the one-deposition limit per party presents a scheduling challenge but should streamline discovery.

Defendant's Position: This Plaintiff as do other Plaintiffs, wish to restrict the scope of discovery and to control the scope and flow of the discovery separate and apart from what would be typical in a personal injury claim, which in essence this case is. There are pending motions in the various cases dealing with the anonymity issue, service of third party subpoenas, past sexual history and basic information needed to defend a personal injury suit. In the vast majority of the pending cases, the individuals who claim humiliation, embarrassment and severe emotional distress to name a few of the damages, went voluntarily to the Defendant's home on multiple occasions and took

either a friend and in some instances their best friend. As has been briefed in other cases, the Defendant believes that the individuals' sexual history, past and current, is relevant for the reasons set forth in those motions.

The Court's recent order imposing a one deposition limit for each Plaintiff and a single deposition for the Defendant will present some significant scheduling challenges with the number of attorneys involved. Attempts have been made on at least one occasion to schedule a deposition and getting all of the attorneys to respond, with any meaningful time frame, indicates that it could take weeks if not months to complete some of the depositions because of the lawyers' schedules.

C. Issues About Disclosure of Electronically-Stored Information

Plaintiff's Position: The parties do not know whether issues will arise concerning discovery of electronically-stored information, but it seems likely. Both parties have issued preservation letters to their opponents. Plaintiff has filed a motion aimed at preserving evidence and setting parameters for potential discovery disputes. At this time, such discovery may be produced in paper or electronic form, subject to further order of the Court as may be necessary as discovery proceeds, subject to any objections. The format in which e-files should be required to be provided may need to be established by Court order. This could be critical when it comes to issues regarding the various Plaintiff-victims' pornography claims.

Defendant's Position: Defendant will in all likelihood raise in this case Fifth, Sixth and Fourteenth Amendment issues and privileges.

D. Issues About Claims of Privilege or Confidentiality

Plaintiff's Position: Plaintiff requests that her identity remain anonymous in this proceeding because she was a victim of Defendant's sexual misconduct while she was still a minor and is now a mere young adult. Making this information public would cruelly subject her to further trauma, humiliation, embarrassment, stress, and loss of self-esteem. At a minimum, the Plaintiff's name should be redacted from papers and exhibits filed with the Court or, otherwise, be filed under seal. On the other hand, with regard to third party discovery, it would be most effective for it to be issued with Defendant's name redacted. Obviously, the plaintiff's identity is necessary in third party requests in order for the recipient of the notice or subpoena to know to whom the documents that are being requested relate and how to select them.

The issue of anonymity is being fully briefed by the parties, and in her motion papers, Plaintiff has offered several suggestions, including those briefly mentioned above, as to how reasonable access to records may be provided to Defendant while simultaneously safeguarding Plaintiff's privacy. Perhaps the appointment of a special master to ensure full and fair discovery might be most effective.

Defendant's Position: Defendant has chosen to oppose anonymity in that the Defendant believes he is being prejudiced in attempting to defend himself and in conducting even basic discovery. The Plaintiffs' attorneys wish to filter the information through them and to limit the scope not only of discovery but ultimately that which will be admissible to attempt to portray Plaintiffs, including Jane Doe 101 in the most favorable light. Jane Doe 101 came to the home on at least one occasion, if not more than one occasion. It is also the undersigned's belief that she brought at least one, if not more girls to experience same "severe emotional damages, humiliation and embarrassment" that she claims. It simply does not make sense. At some point, there will be third-party depositions that will take place and are the Plaintiff and her lawyer realistically stating or

suggesting that neither the Plaintiff's name nor the Defendant's name can be used, and that this case is going to be treated in some vacuum? The Defendant has due process rights, and their suggestion about confidentiality with regard to discovery, is for the sole purpose of attempting to present the Plaintiff in the most favorable light and to steer clear of arrest records, criminal records, health records, witness' information, etc. which maybe relevant, material and certainly lead to the discovery of admissible evidence re: many issues including damages and proximate causation.

The Defendant will be asserting his Fifth, Sixth and Fourteenth Amendment privileges in this matter as to discovery issues.

E. Limitations Imposed by the Discovery Rules

Plaintiff's Position: Plaintiff requests that the limitation of 10 depositions for each party under Fed. R. Civ. P. 30(a)(2) be removed. Plaintiff intends to participate in some of the depositions of and by other victims. There is no need at this time to alter other limitations imposed by the discovery rules, except for the hourly limit, which the Court has addressed in its Order of May 28, 2009, consolidating cases for discovery and procedural matters.

Defendant's Position: Defendant would request that the 10 deposition limit be imposed, pending a motion by either side setting forth justification for additional depositions, or by agreement of counsel

F. Other Orders that the Court Should Issue Under Rule 26(c) or Rule 16(b) and (c)

Plaintiff's Position: Several motions are being briefed at this time, including, but not limited to, Plaintiffs' Motion for Preservation of Evidence; Plaintiffs' Motion for No-Contact Order; Plaintiffs' Motion to Proceed Anonymously; Defendant's Motion to Compel and/or Identify Jane

Does for Third-Party Subpoenas; and Defendant's Motion to Stay. Plaintiffs believe that a status conference involving all of those cases that have been consolidated for the purposes of discovery and procedural matters might assist the parties and the Court in clarifying and resolving pending issues.

With respect and knowledge that the Court has just ruled, Plaintiff's counsel must reiterate our strong belief that a determination of certain threshold legal issues would assist in making settlement negotiations that currently are unworkable, more meaningful. These issues are: 1) retroactivity, i.e., whether the statutory minimum is \$50,000 or \$150,000; and 2) whether that applicable amount is the minimum to be awarded per incident, per cause of action or per victim.

Defendant's Position: The Defendant is aware of the Court's recent ruling commenting on the issue of retroactivity, i.e. applying the 2006 Amendment to 18 U.S.C. §2255 which was not in existence at the time of the alleged incident; and, the issue as to whether or not a minimum amount, if applicable, is to be based on a single cause of action or on a per incident basis under §2255. These are issues that in part have been raised in the Defendant's motion to dismiss. Defendant has no objection to the Court dealing with those issues at this time.

II. CONFERENCE REPORT

A. Likelihood of Settlement

Plaintiff's Position: The Plaintiff has attempted meaningful settlement discussions. Plaintiff is willing to continue to explore the prospects for settlement through mediation or otherwise as the case proceeds forward.

Defendant's Position: The Defendant has engaged through his attorneys a meaningful settlement discussion. The Defendant, as well, will continue to explore the possibility of settlement through mediation or otherwise.

B. Likelihood of Appearance of Additional Parties

It does not seem likely that additional parties will appear in this case. However, the parties reserve the right to join additional parties within the deadline set forth in Section I (B) above, if appropriate.

C. Proposed Time Limits

Proposed time limits are set forth in the Discovery Plan, Section I(B) above.

D. Proposals for the Formulation and Simplification of Issues

Plaintiff's Position: Plaintiff believes that a status conference allowing argument on certain pending motions and clarification of issues related to consolidation and damages would be of great benefit in regard to the formulation and simplification of issues at this time.

Defendant's Position: As the Court is aware, there are a number of cases which are currently being handled by this Court arising out of similar allegations. Many of the issues raised in the case *sub judice* have been raised in other cases. A status conference will serve no purpose. The parties, through their attorneys, are very capable in submitting the appropriate papers to fully argue and explore the issues which have been raised. Having 5 or 6 different sets of the Plaintiff's lawyers (all of which will come in multiples) arguing with the Defendant's attorney, i.e. the undersigned, will only create a circus like atmosphere.

E. Necessity or Desirability of Amendments to the Pleadings

Plaintiff filed her Amended Complaint on April 17, 2009. Plaintiff does not believe at this time that further amendment will be necessary. The parties however reserve the right to amend pleadings within the deadline set forth in Section I(B) above.

**F. Possibility of Obtaining Admissions of Fact and of Documents;
Stipulations; Need for Advance Ruling on Admissibility of Evidence**

Plaintiffs' Position: Plaintiff believes that Defendant's Non-Prosecution Agreement with the United States Attorney's Office constitutes an agreement to waive the right to contest liability as to all Counts of the Amended Complaint. Plaintiff requests an early ruling by the Court on the effect of the agreement which has been filed by Plaintiff under seal according to this Court's order, which will simplify the issues. Additionally, Plaintiffs believe that it is appropriate to have an advance evidentiary ruling on similar fact evidence. If the parties know early in the case how similar fact evidence will be treated at trial, discovery can be more focused and efficient.

Defendant's Position: Defendant expects that the parties will work together to arrive at admissions as the matter progresses. Defendant disagrees that Defendant's plea agreement is an admission as described by Plaintiff. Defendant does agree that having an advance ruling on similar fact evidence may be desirable, after motion and ability to brief and respond.

**G. Suggestions for the Avoidance of
Unnecessary Proof and of Cumulative Evidence**

There are no suggestions at this time for the avoidance of unnecessary proof or of cumulative evidence.

**H. Suggestion on the Advisability of Referring
Matters to a Magistrate Judge or Master**

The parties suggest that discovery matters be referred to a Magistrate Judge.

Plaintiff's Position: In addition, the motion papers pertaining to the anonymity issue include a proposal for the appointment of a special master to act as a neutral decision-maker with regard to

the issuance of third-party requests and the gathering of records in a way that would protect the victims' interest in anonymity while ensuring Defendant full and fair access to records---a novel idea that may be worthy of consideration.

Defendant's Position: The Defendant opposes using any special master or any other "special system" different from that which is set forth in the Rules of Civil Procedure. Should the court decide that the Plaintiff is entitled to anonymity for some additional period of time, then the Defendant should be allowed to do full discovery such as serving third party subpoenas for records and to depose third parties. Under the circumstance, the Defendant offered to not file any records in the court file containing Jane Doe 101's name at this time and to merely use the names, date of birth, and the last four digits of the social security numbers of the Plaintiffs for purposes of identification in serving subpoena. The absurdity of the Plaintiffs' position is that when depositions of witnesses, physicians and other third parties take place, the witness is going to know the name of the Plaintiff, the name of the Defendant, and the circumstances surrounding the case. What the Plaintiff wants to do is to preserve anonymity so that she and her lawyers can control as best as possible, any negative information which would affect her damages. Setting aside the Plaintiff's allegations, the Defendant, just as is any Defendant, is entitled to full and fair discovery and a fair hearing/trial. The Plaintiff and her attorneys believe that because of the allegations (not proven) that she is entitled to some special care or treatment which would preclude any adverse or mitigating information to causation or damages. Every plaintiff would like this same cocoon built around their case, i.e. put in the favorable evidence, information, prevent the Defendant from providing any negative or mitigation evidence and ask the fact finder for a ton of money. Fortunately, that is not the way the Rules of Civil Procedure operate.

I. Preliminary Estimate of the Time Required for Trial

The parties estimate that the trial will require five to six (5-6) days.

J. Requested Date or Dates for Pre-Trial Conference and Trial

Dates are set forth in the proposed discovery plan, Section I (B) above.

K. Other Information

The parties know of no other information that might be helpful to the Court at this early date regarding setting the case for status conference or pre-trial conference.

Dated: June 12, 2009

Respectfully submitted,

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