

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

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

JANE DOE NO. 4,

Plaintiff,

v.

JEFFREY EPSTEIN,

Defendant.

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**DEFENDANT EPSTEIN'S RESPONSE TO PLAINTIFF'S MOTION FOR  
PROTECTIVE ORDER AGAINST PIECemeAL DEPOSITIONS OF  
JANE DOE NO.4, MOTION TO CONSOLIDATE CASES FOR PURPOSES  
OF DISCOVERY, AND INCORPORATED MEMORANDUM OF LAW IN  
SUPPORT**

Defendant, JEFFREY EPSTEIN, by and through his undersigned counsel, serves his Response to Plaintiff's Motion for Protective Order Against Piecemeal Depositions of Jane Doe No.4, Motion to Consolidate Cases for Purposes of Discovery, and Incorporated Memorandum of Law (hereinafter, the Motion"), with incorporated memorandum of law. In support, Defendant states:

**I. RESPONSE WITH INCORPORATED MEMORANDUM OF LAW AS TO  
DEPOSITION OF JANE DOE. NO. 4 AND MOTION TO CONSOLIDATE**

**a. The Depositions**

Plaintiff, Jane Doe No. 4, filed this federal lawsuit against Defendant, Jeffrey Epstein. In other separate matters, Plaintiffs, Jane Does, Nos. 2, 3, 5-7, filed their own separate lawsuits against Defendant, Jeffrey Epstein. Plaintiff's counsel represents all Jane Does in cases Jane Doe Nos. 2 through 7 before this court.

Plaintiff, Jane Doe. No. 4, served answers to interrogatories wherein she lists certain witness that may have knowledge regarding the facts and allegations alleged in her complaint. See page three of Plaintiff's Motion wherein she admits that two of the other Plaintiff's in related cases talked to her about giving massages. In particular, the response to interrogatory number 16 states that Jane Doe numbers 3 and 7 talked about giving massages. Defendant seeks to take the deposition of Jane Doe. No. 4 as a witness in those matter (or any other matter she has knowledge of) and as a party in her own case, which she is an unidentified Plaintiff traveling under Jane Doe. No. 4.

In an attempt to resolve this matter by letter correspondence, Defendant agreed and offered only to take the deposition of Jane Doe. No. 4 as a witness in all Jane Doe 2-7 cases only one time and separately one time as a Party Plaintiff in this matter in which Jane Doe No. 4 filed against Jeffrey Epstein. While this is a reasonable compromise in that Defendant has agreed not to take her deposition three (3) times as Plaintiff suspected, Plaintiff's counsel refused to agree. Plaintiff cannot file a lawsuit and then expect this court to protect her from being deposed as a party for the time period proscribed under the federal rules while at the same time asking this court to limit or prevent her deposition testimony as a witness in the instant matter or other Jane Doe matters where she has been identified as a witness.

It is well settled that a Defendant may take the deposition of a party and/or a witness before trial. Rule 26, Fed.R.Civ. P., Rule 30, Fed.R. Civ.,P. and Leve v. General Motors Corp., 43 F.R.D. 508 (S.D.N.Y. 2967). Jane Doe. Nos. 2-7 commenced separate civil actions upon the filing of same against Jeffrey Epstein. Therefore, Defendant is entitled to depose Jane Doe Nos. 2 - 7 in their own cases at least one time for the proscribed time periods and then as a witness in the instant matter or any matter they have knowledge of as reflected in the interrogatory

responses or the pleadings. Therefore, Defendant has a right to depose each party-plaintiff separately and then as a witness at least once. Deposing Jane Doe No. 4 as a witness in the other matters is necessary as that deposition will be tailored toward facts known by Jane Doe. No. 4 as those facts pertain to Jane Doe. Nos. 2, 4-7 claims in their complaints as opposed to the facts alleged by Jane Doe. No. 4 in this individual action.

Plaintiff's attorneys claim that sitting for more than one deposition will be traumatizing does not modify the rules and/or the law with regard to the right to take party and witness depositions. Plaintiff offers no expert medical or psychological support, by an affidavit of an expert or the Plaintiff herself, to support her position. In almost all instances, none of the Plaintiff's sought or received any psychological counseling until the concept of a lawsuit and money was introduced. A party may, by oral questions take the deposition of any person, without leave of court. Rule 30, Fed.R. Civ.,P. Conducting these depositions separately will allow for the proper preparation as to each deponent's knowledge as that knowledge pertains to the specific case at hand (i.e., whether the deponent is a witness and/or a party plaintiff). Again, Defendant is willing to conduct one (1) deposition in connection with each matter before this court wherein a party to one matter is listed as a "witness" in another. That is, if Jane Doe No. 4 has knowledge as a witness to one or more matters, one "witness" deposition will be held. However, Defendant is also permitted to separately take a party-plaintiff deposition of any party-plaintiff that happens to be a witness of and/or have knowledge of any other party-plaintiff's deposition. As such, only two depositions will occur.

There is no legal basis supporting Plaintiff's proposition that Defendant not be allowed to take the deposition of Jane Doe. No. 4 as a witness in the other matters and as a party-plaintiff in Jane Doe. No. 4's separately filed action. In fact, Plaintiff's theory flies in the face of the

Federal Rules. Despite Plaintiff's contention, Defendant is not attempting to depose or call a witness for a second deposition without leave of court. Quite the opposite, Plaintiff is simply doing what the rules allow for – the taking of a deposition of a party and a witness.

**b. Consolidation For Discovery Is Not Practical**

Next, if this case is consolidated for discovery purposes and depositions are limited only to one (1) deposition for a party plaintiff and for a witness that happens to be a party plaintiff in another matter, then confusion will result and motions in limine will undoubtedly be filed at a later date preventing the use of certain testimony at particular hearings and ultimately at trial. Further, since there remain separate party-plaintiffs, admissions or answers to discovery by one party, arguably, cannot be used by the Defendant in a consolidated discovery matter against another party-plaintiff. As such, consolidation in the instant matter is not warranted in that not all common issues of fact are present and the parties are not identical. Kelly v. Kelly, 911 F.Supp. 66 (N.D. NY 1996)(consolidation refused because it would only serve purpose of convenience of some witnesses, actions did not share all witnesses and parties were not identical); Borough of Olyphant v. PPL Corporation et al., 153 Fed.Appx. 80, 2005 WL 2673489 (C.A.3 (P.A.)); Ford Motor Credit Company v. Chiorazzo, 529 F.Supp.2d 535 (D. N.J. 2008).

Under Florida Rules of Civil Procedure 42, the decision to consolidate cases for discovery is not mandatory but that decision remains within the sound discretion of the court. In this instance, various Jane Does seek to consolidate the cases for discovery purposes. Very clearly, the facts and circumstances, as pled and as is reflected in answers to interrogatories, are different for each individual, i.e. the dates, the ages, the events, their experiences, witnesses, medical and/or psychological treatment, etc. Each of the Plaintiffs alleged incident history and post incident history and background is unique to those individuals. While the Jane Doe Plaintiffs

may wish to serve a “standard” set of interrogatories, request for production, or any other type of discovery, the Defendant’s discovery to the individual Plaintiffs, and certainly their responses, is unique to that individual. There will be multiple instances where the discovery is applicable only to a specific Jane Doe and not all, such as, physicians, psychologists, parents, siblings, friends, employers, teachers, individuals with whom the Plaintiff has had relationships – many of these depositions will go to damage related issues wherein the Plaintiffs seek millions of dollars in the form of compensation.

There are some instances where the deposition of a particular individual may be applicable to all cases, and defense counsel will suggest, as he did in correspondence directed to Plaintiff’s counsel that that particular deposition be used in all cases. However, in a vast majority of the instances where discovery, deposition and/or paper discovery is being utilized, including subpoena which will be sent to many different sources for each of the six Jane Does, consolidation serves no purpose.

Even if this court consolidated the matters requested by Plaintiff, the undersigned would still be entitled to additional time to depose any party-plaintiff that is also listed or who has knowledge of any aspect of any other party-plaintiff’s claim against Jeffrey Epstein. In addition, this Court has before it each of the cases filed by certain Plaintiffs against Jeffrey Epstein. Therefore, there is no chance of “conflicting results” as to rulings made by the same court and the same judge. As such, no true need exists for consolidation. Under Fed.R.Civ.Pro. 42, consolidation for discovery is not required, but remains within the sound discretion of the court.

**II. Conclusion**

In sum, if Jane Doe No. 4 has knowledge as a witness to one or more matters, one "witness" deposition will be held as to her witness knowledge. However, Defendant is also permitted to separately take Jane Doe. No. 4's deposition as a party-plaintiff.

WHEREFORE, Defendant requests that this Court deny the Motion, enter an order allowing for the relief requested herein and for such other relief as this court deems just and proper.

By:   
ROBERT D. CRITTON, JR., ESQ.

**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 17 day of April, 2009:

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Respectfully submitted,

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