UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	:	
		Docket #1:19-cv-08673-KPF-DCF
DOE, JANE,	:	
Plaintiff,	:	
- against -	:	
INDYKE, et al.,	:	New York, New York June 24, 2020
Defendants.	:	
		TELEPHONE CONFERENCE
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PROCEEDINGS BEFORE
THE HONORABLE JUDGE DEBRA C. FREEMAN,
UNITED STATES DISTRICT COURT MAGISTRATE JUDGE

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Witness	Direct	Cross	Re-Direct	Re-Cross
None				

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HONORABLE DEBRA C. FREEMAN (THE COURT): So this is Judge Freeman. This is Doe v. Indyke, and it is 19-cv-8673. The case is before Judge Failla.

Can I have counsels' appearances, please, for this record, starting on plaintiffs' side?

MS. ROBERTA KAPLAN: Yes, your Honor. For plaintiffs you have Roberta Kaplan. And I'm here with my colleague -- or I shouldn't say "I'm here" -- I'm on the phone with my colleague, Kate Doniger.

THE COURT: Okay. And on defendants' side?

MR. BENNET MOSKOWITZ: Hi, your Honor, Bennet Moskowitz.

THE COURT: Hold on a second. If others could please mute their lines if they're not speaking? It sounds like someone is maybe monitoring another call at the same time. So I'd appreciate it if you could just mute.

Thank you. On defendant's side?

MR. MOSKOWITZ: Yes, thank you, your Honor. I was waiting for that to play out; I heard the same thing. Bennet Moskowitz, Troutman Sanders, for the co-executors. And my colleague, Molly DiRago, is also on the line.

THE COURT: Okay. Is there anyone else on the line who is a participant in this call, an attorney for one of the parties in this case?

THE COURT: All right, we have a number of people on the line apparently. I probably have some people from my chambers who are listening in, including student interns. And there may be press on the call and others. I'm just going to ask anyone who's listening, again please keep your lines on mute so that it doesn't interfere with the conference with the participants.

So the reason I wanted to have a conference in this case -- well, there are a few reasons. There are discovery disputes on the docket that need attention, there's a scheduling matter that needs attention. There's a bigger issue that I wanted to raise about what's going on with this case and the potential settlement of claims through the program that's been set up.

So let me start there because of all of the many cases that have been filed in the court, most of which have been referred to me to supervise, far and away most of those are now temporarily stayed because the plaintiffs are planning to pursue remedies in the claims program, now that it's gotten off the ground, and have voluntarily consented to stays. Obviously, there's no obligation that a plaintiff voluntarily consent to a stay, but I did want to understand why this case pretty much stands alone as being aggressively litigated at this time and understand if

plaintiff has decided not to participate in the program or is considering and hasn't decided yet whether to participate or wants to do both things simultaneously or what the story is with this particular plaintiff. So can I have that addressed first?

MS. KAPLAN: Sure, your Honor; it's Roberta Kaplan. Let me -- first, to answer your question directly, let me tell you that our client is still considering whether to participate in the program. But --

THE COURT: I'm sorry, is still considering?

MS. KAPLAN: Yes, whether or not to --

THE COURT: Okay.

MS. KAPLAN: And she may indeed well do that. But I think it's very important for the Court to understand that the program itself is not a settlement discussion of this case in the sense that the defendants in this case, as we understand it, have no role in relationship to ability to interfere in any way -- in any way -- with the settlement program. So essentially the way it works, as we understand, is Ken Feinberg and his colleagues will come up with a number. That's the number, and it's either take it or leave it. There's no subsequent negotiation with the estate or anyone else. And so it's not like it's really a settlement discussion of this case; it's not. It's an

amount of money that Mr. Feinberg thinks is appropriate under the settlement fund.

For many reasons, including the fact that we believe our client is differently situation than many if not all of the other plaintiffs, she believes that there is a very strong likelihood that she is likely to receive more in this case at trial than she would from whatever Mr. Feinberg determines on his own is the appropriate number.

And that's for a couple of reasons. One, very few of the cases or not many of the cases have plaintiffs who were underage at the time the acts happened. So there is no statute of limitations problem in this case. And, two, there is no issue in this case, as there are in many of the other cases, about whether or not our client settled any prior claims with either Mr. Epstein or the estate. And the facts are straightforward. She was, as your Honor knows, was witness No. 1, victim No. 1 in the indictment. The U.S. Attorney's Office was fully satisfied in her story. We believe that, whether it's a bench trial, as we've requested, or a jury, that either the judge or the jury will be, too.

THE COURT: If she does participate in the program and an amount is offered to her and she decides to accept

it, does that have the result of resolving this litigation?

MS. KAPLAN: Absolutely. And the minute that happens, we would obviously voluntarily dismiss this case. I think that's a condition of participation in the program.

THE COURT: All right. So --

MS. KAPLAN: We also don't know, your Honor, how quickly the program's going work, how many women have been in it. And, again, based on our understanding of the kind of damages awards that Mr. Feinberg and his colleagues have given in analogous circumstances -- and I'm thinking of the Catholic church cases -- we think it's unlikely, very unlikely that our client is willing to accept the kind of amounts that he's previously offered in similar situations.

THE COURT: Well, I assume if you decide to participate in it, you'd participate in it, consider any amount that may be offered, you know, in full good faith, and mull it over and make a decision. You're not going to go into it saying we're not going to accept it whatever it is; you find out what it is.

MS. KAPLAN: Oh, no, no, no, no.

THE COURT: You find out what it is.

MS. KAPLAN: Of course, your Honor. We've basically done a lot of work on this, so we're basing this on what we understand to be amounts that similar funds that

Mr. Feinberg has administered have offered to plaintiffs who've experienced things similar to what our client has experienced. And the numbers tend to be actually quite low.

THE COURT: Okay. Well, I can't speak to that. I don't know what may be offered in this case. Here are some concerns that I have. One concern that I have is that the underlying reasoning for the Court to make the institutional decision to refer a lot of these cases -- I mean, I shouldn't say that, actually, because it was still an individual judge's decision to refer or not to refer -- most of the judges decided that they would refer cases to me so that there could be coordination among the cases where appropriate in discovery to conserve resources, both for the estate, for the Court, just generally to have coordination so that you didn't have, for example -- and I think it's the most obvious example -- a witness who was going to testify to something that would be relevant to all of the different plaintiffs have to testify on multiple occasions if that could be avoided. And that seems to me still to be a laudable goal. And if it's possible that your client may --

I just want to make sure that we didn't gain -- that sounds like someone joining the call -- we didn't gain

any attorney who wants to be participating in this case. Did anyone just join in who wants to be speaking on this call? No. If not, please keep your phone line mute; I appreciate that.

If your client decides to participate in the program, then, you know, query why we're spending a lot of resources now, as opposed to in a couple of months. Most of the stays that have been put in effect are only for a couple of months; they're not infinite stays. There are a couple, I think, that were signed by district judges separately that might say Pending Further Order of the Court. The ones that I've signed recently I think have been 60 days. Mr. Moskowitz, correct me if I'm wrong on that.

MR. MOSKOWITZ: Your Honor, it's been both, actually. I think the majority are even, I would argue, more flexible than that. I believe the majority, including even more recent ones, just say on the plaintiffs deciding that they no longer want the case stayed, they're essentially free to go back to court and ask for the stay to be lifted. I think there are three or so that include a specific 60 days, which I suppose could be renewed or just let lapse.

THE COURT: Yes, I think the most recent ones were

60 days, the most recent ones that I signed off on. So those are the ones most recent in my memory. But I've asked for status reports on all of them by sometime mid-August because I don't want it to stretch out forever.

So the first issue is should we be conserving resources in case your client ends up resolving the claims through the program. And the second is if your client really is unlikely to participate, unlikely to resolve the claims that way, is there a possibility, and how likely is this, that one of the other plaintiffs or more than one of the other plaintiffs will make a similar decision and will want to come back and litigate maybe in a couple of months, and at that point, would it make sense to try to have some coordinated discovery, particularly again with respect to certain depositions perhaps or certain discovery from the estate or some of the discovery plaintiff by plaintiff is going to be different -- and I understand that -- but some of it is likely to have some common threads; is there a distinct prejudice to waiting for some reasonable limited period of time to see if somebody else comes back into the mix before we go forward with a slew of depositions? And part of the reason for the call was when I asked you to see if you could work out a schedule that included dates for depositions and stop just squabbling about it, you came

back with nearly a dozen depositions over a relatively short period of time. And that sort of jumped out at me as wait a second; does it make sense for any of those, at a minimum even if not all of them, to be put on hold to see whether they're the kinds of things that should include parties in more than one of these cases in order to have a more efficient running of multiple cases to conserve resources, including resources of the estate, which after all, maybe can and should be going towards plaintiffs as opposed to litigation costs.

And so, you know -- and there are a lot of things that factor into that kind of thought process. One of them is when you have a delay, you know, how likely is it that documents won't be preserved or that memories will fail. Here we have a very long time since the underlying events, and so the likelihood that, you know, memories will fail now that haven't failed already or that documents won't be preserved now when there's a litigation hold when they weren't preserved already -- when they weren't previously preserved, that seems unlikely. And in terms of how fast could this case otherwise get to trial, since I'm sure plaintiff, you know, doesn't want to delay any longer than necessary to reach a resolution, we have the COVID-19 issue, which means that we're set back as a court with

respect to how fast we can get cases tried. And that's just a current fact of life.

And I was speaking to Judge Failla about this to try to get a sense from her as to what she thought, and I don't know if this would be a bench trial or a jury trial. Which would it be, by the way?

MS. KAPLAN: Plaintiffs have waived a jury trial.

THE COURT: Okay. So with a bench trial --

MR. MOSKOWITZ: We have -- I'm sorry, we --

MS. KAPLAN: It's hard for me to believe, your Honor, it's hard for me to believe that --

THE COURT: Wait, wait, wait just a second. Did defendant --

MS. KAPLAN: Can I finish what I was going to say? It's hard -- defendants have not responded to that -- it's hard for me to believe that the defendants truly believe that they're going to insist on a jury, given the facts and circumstances of this case, but they have refused to tell us whether or not they agree to waive a jury trial.

THE COURT: What is defendants' position on this? Because if you didn't --

MR. MOSKOWITZ: Yeah, the position --

THE COURT: -- answer --

MR. MOSKOWITZ: -- was not file -- no, that's not

correct, your Honor. The plaintiffs' last exchange on this was they -- they said, "Will you waive a jury trial?" We said we're not prepared at this time to make that decision and waive a jury trial. And they said, "Fine. Let us know by the 30th; otherwise, our offer of waiving the bench trial is no longer there." What I'm hearing now is that they are absolutely committed to waiving jury trial. I still am not prepared at this time to make that waiver on my side, nor do I see why it has to be decided at this time.

MS. KAPLAN: Yes, what you're hearing, Mr. Moskowitz, is that you are delaying again in bad faith because there's no reason --

THE COURT: All right, wait, wait, wait, wait, wait, please. Everybody stop. I don't need to get into an argument about whether there is or is not a jury trial. I'm going to say this about that. I was raising it only because it's going to be harder to get a trial quickly on this case in light of the COVID-19 problem than it would be otherwise. What's happening in the court is this. With respect to juries, right now we don't have jury trials because we can't get jurors safely in the court. When we eventually get juries safely in the court, odds are there will be fewer jurors coming in than had been before in the

initial jury pools because we have to make sure people will be socially distanced. The cases that will go first with juries are undoubtedly going to be the criminal cases where there's a constitutional right to a speedy trial. There's going to be something of a backlog on that. Any cases that are large, that involve large numbers of people in the courtroom are probably going to have to be held in certain designated courtrooms that are particularly large that will enable social distancing. Courtrooms are currently being measured so we can figure out how trials can safely be held, and so on and so forth. In terms of how quickly a civil jury case can be held, the answer is not that fast. Just we're going to have to -- we have a lag time to get jurors, we have a lag time to get enough jurors, we're going to have to deal with the criminal cases, we're going to have to deal with things like Court size. And odds are that that is not happening just -- I can't tell you when it will, but it's not going to be all that fast.

With respect to bench trials, there are some judges who are venturing into the world of holding remote bench trials. I believe Judge McMahon has one scheduled. There are some others who have been making efforts and figuring out remote platforms that will work. And there's also the possibility of sort of hybrid trials where you

have some people in person and you have some people hooked in remotely, you know, certain witnesses or something like that. That is certainly a possibility. But everybody's schedule for trials has also been affected so that if, for example, Judge Failla, who has this case for trial -- and I can't speak to this -- but if, for example, Judge Failla had three criminal trials that she was unable to try because of this period of time when ordinarily trials would be happening, and so those have to be scheduled, then even a bench trial may be difficult to schedule, even if it is logistically possible, because of other things that are going to be on the judge's plate.

So when I look at the issue about delay, there are two main questions that come up with respect to potential delay. One is is it prejudicial to the plaintiff, or to the defendant for that matter, because we're likely to lose evidence, we're likely to have a witness who is --

MS. KAPLAN: Your Honor, can I argue the rest of the factors that you talked about earlier? Because we have things to say about all of them.

THE COURT: Yes. Let me finish what I'm saying, and I'll absolutely hear from you. Okay?

MS. KAPLAN: Okay.

THE COURT: I keep hearing people joining the

call. I'm just going to issue the reminder please keep your line mute unless -- on mute unless you're a participant in this call, in which case please speak up and let us know you are here.

With respect to the loss of evidence, it may be -- and it's a question I usually ask -- you know, it may be there is a particular witness who is ill or very elderly or you know is about to move out of the jurisdiction, you need to preserve evidence, something like that, and those are issues in any case where there is any stay, any delay, that I always want to know about because it may be important to address those particular issues with particular witnesses or particular evidence.

The second thing I look at is what is the end of the road in the case. Is it -- would it, you know, be triable next month, or would it be waiting, anyway, for trial. Here, odds are, even with a bench trial, there's going to be some wait. And so where does the end end up. And that is a factor to think about here and whether it makes sense to hold off on any of the discovery that's currently on the table to see whether either plaintiff resolves the claims through the program or anyone else whose case is currently stayed comes back into the court and says, "Please lift the stay. I want to go forward with

discovery to give us a chance of coordinating that discovery if it makes sense for the particular discovery.

Now, having said all that, I will absolutely hear from you. Counsel?

MS. KAPLAN: Okay. So, number one, on prejudice, your Honor, there will be prejudice to my client even with respect to the Feinberg settlement fund. One of the issues that the Feinberg settlement funds says they will look to in deciding whether or not to award fees or award damages and how much to award is based on the corroborating evidence for the particular person. In our case at this point, we have produced all the documents that we have from our plaintiffs to the other side. Mr. Moskowitz, on the other hand, has produced barely nothing. So that if discovery is stayed at this point, our rights to get a higher award from the Feinberg fund are severely prejudiced. We know they have corroborating information. They have hits that show our client's name and contact with our client. We should be able to obtain those documents, which should have been produced to us long ago, in order to use that if we agree to proceed with the fund to corroborate and to make our claim toward the fund stronger. And by this delay tactic that's gone on and on and on, what they've done is have us produce everything but us not have

the information that we should have that Feinberg, Ken Feinberg, has said is relevant to a determination under the fund. So under no circumstances should there be any stay or delay of document discovery. In fact, that would be severely unfair, given our alacrity and our good faith in producing everything, and unfair to our opportunity to participate in the fund, number one.

THE COURT: Okay. Just let me interrupt you there for one second, because I was not talking so much about documents regarding the particular plaintiff in this case or discovery, for that matter, regarding the particular plaintiff in this case. What I was talking about was whether there -- whether we should still look for any potential opportunities that may come up down the road to coordinate discovery where it made sense because it was common discovery for all of the cases, probably not plaintiff specific.

MS. KAPLAN: So on that issue, your Honor, I'm frankly not aware of any real discovery or evidence in this case that is not plaintiff specific. The trial, when and if it takes place, will last no longer than two, three days. The witnesses will be our clients, psychological forensic experts, maybe one or two people who she told about what happened. And the only two people who

possibly -- we don't have claims against anyone else, we don't have claims against Ms. Maxwell, we don't allege any kind of wider conspiracy regarding Prince Andrew the way the other cases do. It's a very simple, very straightforward case. The only possible overlap that I can possibly think of -- and Ms. Doniger should correct me if I'm wrong -- are two of the women who worked for Mr. Epstein who helped book the so-called massages that our client participated in, both of whose lawyers have told us they intend to plead the Fifth. So we could honestly get a letter from them telling they intend to take the Fifth. And there is, therefore, no overlapping evidence, either in terms of documents or witnesses.

THE COURT: Are they included or not included in the 11 depositions that you listed?

MS. KAPLAN: They are. We have very few depositions. Most of the depositions are ones that Mr. Moskowitz is noticing of my client's doctors, family members and friends.

THE COURT: And why do you think that those might not be witnesses who would testify at trial such that the trial might have more witnesses than what you've described? You've got 11 people to be deposed. That sounds to me like there might be 11 witnesses at trial except for maybe a

couple who take the Fifth.

MS. KAPLAN: No. It's highly unlikely, your Honor. Most of the people, as we notified Mr. Moskowitz many times, like doctor's offices that she's gone to where they told us they have no records; or friends that, you know, barely remember. We were very, as your Honor can imagine, we were very overinclusive to be extremely careful on our 26(a) disclosures. And they just noticed everyone on the 26(a) disclosures, not -- it's very unlikely that any of those people are going -- or most of those people are going to testify at trial. We're certainly not going to put them on. And I would suggest that the point of deposing them is to, again -- I don't know what the point of deposing them is, but I guess he wants to depose all these people under oath and ask them questions. It's very unlikely that any of them will say anything that's going to be relevant to his defenses.

THE COURT: Let me hear briefly on the other side about these witnesses.

MR. MOSKOWITZ: Yes, your Honor, Bennet Moskowitz. I feel like I'm talking about a different case than the one Ms. Kaplan is talking about. And part of this may be because the day-to-day of discovery is not handled by Ms. Kaplan. I've been dealing exclusively with her

colleague who is on the line. So I'd just like to back up and clarify a few things.

One is they have not substantially completed their document production, even putting aside the disputes we have over what they say they don't have to do. In fact, the latest -- and maybe Ms. Kaplan, although she was copied on these emails, wasn't aware of it -- is that they refused to review 7,000 documents that hit on search terms to be proposed. And we suggested ways they can narrow that. And we haven't yet reached a resolution of that.

In terms of our production, the documents -- we did already produce most of the few documents among over 730,000 that hit on their client's name. And they definitively showed why that is, that such few documents exist; not because we didn't find them, but rather because the decedent didn't even have any knowledge of their client when she appeared in more recent history regarding making some kind of pre-litigation settlement demand when he was still alive. So there's been no stonewalling; I'm not sure where that's coming from.

And I want to correct one other thing. You know, I'm hearing this -- and you're right; this plaintiff stands alone. Her counsel now stands alone. So these complaints about the program, they fall flat, given that every other

attorney who was likewise very skeptical, as your Honor knows, has voluntarily stayed their action, with the exception of two cases other than this one that were filed much later, and I'm actually confident we'll reach similar resolutions in those cases. But we will see. It's not the Feinberg fund. Mr. Feinberg's not the administrator. It's Jordana Feldman. Ms. Kaplan knows that. I don't know why she insists on saying that as if it's some kind of ding against the program. Mr. Feinberg, who's the preeminent person who designed such programs, is indeed one of the designers of the program. But there is one administrator, Jordana Feldman, who has full independence. And Ms. Kaplan is right; we don't get to tell Ms. Feldman what should be awarded to this plaintiff. It is solely Ms. Feldman who makes that determination. I don't know why that is viewed as a bad thing; and, again, plaintiff here stands alone in saying that.

Look, your Honor, raised this, as well. This is the world we live in, not as we want it. There is going to be no trial around the corner, whether it's bench trial or jury trial. The estate is not -- is not in favor of dragging things out. That's part of the reason that the program is designed the way it's designed. It's a much speedier resolution of claims than any litigation,

including this one. And the fact that we're now having these disputes in this case while the plaintiff, for whatever reason, wants to rocket through the docket to have, I guess, what they view as, you know, the first crack at a payment of judgment, I get why they want that. But it's not realistic, number one, because of all the reasons your Honor went over; and the other realistic factor that we're ignoring is the money spent on this, it's just not going to be available to the program. That's a harm to this plaintiff if she's going to join -- and I believe she is -- they've struggled in many different ways to avoid saying yes, they're going to do the program. I'm very confident they will, based on my understanding of their heavy involvement in discussions with Ms. Feldman and Mr. Feinberg. But that money is not going to go to this plaintiff, it's not going to go to any other plaintiff. That's their choice. We haven't sought a stay; it's not required. That was one of the other benefits of the program. But the fact that everyone else, for the most part, has seen the wisdom in staying their action but this plaintiff is the outlier speaks volumes to their intent, not ours.

In terms of these depositions, look, they can't have it both ways. They said we were very careful in only

disclosing the people that really have anything of knowledge. Yeah, they did that, and we need to speak to these people. This is a serious case, they're seeking serious damages. They haven't told us how much and, you know, that's part of our letter, which is just unbelievable now that we're nearly a year out from when they filed it. But the fact that their client saw so many doctors related to their myriad of alleged harms is what drives our need to depose so many people.

There are only a couple of fact witnesses, and then they mentioned family members like we're trying to bully people, well, paragraph 58 of the complaint brings the plaintiff's husband directly into this case because she alleges that Mr. Epstein's abuse that allegedly occurred caused her issues in her marriage. We didn't bring him into the case; they did. So, yes, we do need to depose the husband. We're not going out and deposing relatives that have not been brought into the case and that we have no reason to believe know anything, but it is going to be more than two witnesses and this. You know, you hear a lot of, oh, it will be this, so a day later we'll be done. That's how they want it. But we have a lot more to do.

And we're very unhappy that they're just, after many weeks where we had what I thought were very productive

conversations, it was really just between me and Kate and some of her colleagues -- Ms. Kaplan was not part of those discussions. They turned around and basically said to us, "All right, well, it's your fault you waited so long; you really better finish your depositions in, you know, record time." What is the rush? Like your Honor said, there is not going to be any trial tomorrow. It's not going to be next month. There is time to do this. There's even time, if the Court sees the wisdom in it, for a 30- or 60-day stay, just like in all the other actions. No one will be harmed. The only harm that for certain will happen if this case continues to go forward in this fashion is that we will have to burn through litigation fees having to deal with disputes over documents, depositions that may be avoid altogether.

So the situation is clear, and your Honor already got it exactly right. You don't need me to explain to you what the situation is. Your Honor already correctly understands it.

MS. KAPLAN: Your Honor, when my client was --

THE COURT: Who are the -- who --

MS. KAPLAN: -- a 14-year-old girl --

THE COURT: Hold on, please. These 11 witnesses for deposition, can I just make a list of who they are by

kind of the category? In other words, a plaintiff's doctor, a plaintiff's doctor, a plaintiff's relative, and how many are not directly connected to plaintiff in that sort of way.

MR. MOSKOWITZ: Sure, I could do that. And it was actually -- plaintiff's counsel asked us not to put the names in the submissions, so we --

THE COURT: No, I don't want the names --

MR. MOSKOWITZ: -- abided by that.

THE COURT: -- I just want --

MR. MOSKOWITZ: Yeah, I won't do that.

THE COURT: -- just like the concept of who they are.

MR. MOSKOWITZ: Sure. So four individuals are, I believe, friends of plaintiff that they disclosed as having knowledge of plaintiff's allegations. I believe there are three treating physicians that they disclosed. There is also the plaintiff's husband, which I just went over. And then there's the plaintiff's deposition and Rule 35 examination. And then the other two are the alleged co-conspirators that -- and those are depositions that the plaintiff seeks, not us. And those are people that are in --

MS. KAPLAN: Your Honor, exactly -- exactly as I

explained, there is no overlapping witnesses in this case, other than the two co-conspirators, again, both of whose attorneys have told me they intend to take the Fifth. And they're not co-conspirators in the sense that we're suing them; they're co-conspirators in the sense they were the two women who booked so-called massages for my client with Mr. Epstein when she was a child of 14 years old.

Our client has waited, your Honor, a very long time to get justice from Mr. Epstein and now from his estate. The idea there's a $350 million estate -- or at least that's what they say it is -- that our client should wait so that the estate can save on litigation costs, given what Mr. Epstein has done to my client, is not only unconstitutional but offensive. All these depositions are depositions they want to take. There's no overlap with other cases. The reason -- the explanation he gave you about documents, they gave us one woman's name and said, "Search the name Maria," for example. And we had 7,000 hits, and we said, "That's not the way to do it. Give us some limiter. Maria within 5 of X or 5 of y. That's the way people do litigation, as I'm sure your Honor knows as a magistrate in the Southern District. And they refused to do that.

So the idea that we should have to wait for the

settlement fund when an explicitly bargained term of the settlement fund was that no one would have to wait, that no one would have to stay their claim, it's written into the fund itself, when there's no overlap and when we've completed our document production and we're waiting for theirs is frankly unfair, especially because it will prejudice us with respect to the fund. Mr. Feinberg and Jordana have said very clearly they're looking for all the documents they can get their hands on.

THE COURT: Okay. Okay. I am -- I would like it if you could try to pin down if in fact these two witnesses are planning to take the Fifth because, if so, that will be a very short deposition. I'm sure it can be -- maybe it can be done in writing ahead of time; or if you must have somebody on the record, I'm assuming you can say, you know, general questions, "If I were to ask you any questions about this or that, would the answer be the same?" And it would be very short --

MS. KAPLAN: Of course, your Honor.

THE COURT: I'm sorry -- that would be very short. And that does not trouble me in terms of a lot of cost or time.

I'm satisfied with respect to the other witnesses that they are very case specific and that there would not

be any lost opportunity -- if I have those depositions go forward, there would not be any lost opportunity for coordinating depositions with other cases because it sounds like these other witnesses would not be relevant to other cases. If it is -- if there are people who are particularly friends of the plaintiff and they're being asked to testify about things other than what plaintiff's told them, you know, they may have been friends of others, as well, you know, but I'm satisfied that the questioning here will just relate to this plaintiff. Treating physicians are obviously this plaintiff's doctors. Plaintiff's husband is obviously this plaintiff's husband. And the plaintiff is obviously the plaintiff. So it does not sound like there are efficiencies or economies there that I should be concerned about with respect to depositions, which was my first reaction when I saw that long -- a list of deposition dates. Okay?

It may be also, if some of these witnesses really do not have much information, you will have -- you can either work out a substitute way to depose them that makes it simpler -- you don't have to retain a court reporter and you can just get some written statement or something or maybe you can have more than one in a day or something to make these take less time and be less costly. And I will

say that I am charged, under Rule 1 of the Federal Rules, with trying to make sure that they are interpreted and administered in a way that not only is efficient but that is -- that keeps the economies in mind and keeps the cost in mind. And I need to do that as I look at a case. I need to do that with respect to document production. I need to do that in general.

With respect to document production, it's hard for me to tell exactly what's been going on here. Each side claims that it's been, you know, highly forthcoming and the other side has not been. I don't really want to hear that. I really just want to hear that you're working cooperatively and in an efficient manner to get the productions done. If they are productions that are specifically related to plaintiff, then I don't really see the reason to hold it up. I mean, I do think that it would be nice if every last dime in the estate could be kept there and be used for compensating victims if there's, you know, it's demonstrated that people have been victims, that they should get the money as opposed to the lawyers getting the money. But, you know, if it's very case specific, if it's very plaintiff specific and plaintiff wishes to proceed with it, I'm going to let that proceed. If there are any documents that are not case specific and where

there would be any efficiencies to doing it differently, I don't see it the same way as I see it with respect to depositions where you might want to have other lawyers in the room asking questions. I see less reason to hold off on the document production. But if there's something I'm not thinking of that you want to bring to my attention, bring it to my attention.

But I'm going to resolve the disputes that are in front of me about documents in particular. And I'm going to, you know, urge you to move forward civilly and without, you know, name calling or finger pointing or charging the other with any kind of shenanigans and just try to get it done.

MS. KAPLAN: Agreed, your Honor.

THE COURT: I don't know that I have a motion to compel from the plaintiff. I know I have a motion to compel or a request for a conference in connection with a motion to compel on the defendants' side seeking more from plaintiff. But plaintiff's counsel was complaining on this call. Do you also have ripe issues on your side that you --

MS. KAPLAN: I anticipate -- no, no, your Honor. I anticipate we'll be able to work out whatever remaining issues we have --

THE COURT: Perfect.

MS. KAPLAN: -- on our side. We do not have a motion to compel at this time.

The only other thing I wanted to clarify, your Honor, is it's not my understanding that all -- let's assume the estate has $350 million. It's very clearly not my understanding that the estate has committed to pay the entire amount of the estate to Mr. Epstein's victims. And that's not the way the Feinberg fund was set up or will be administered. Rather, it's my understanding, that any amounts that are not paid to victims will go to the heirs under the estate, who we understand is Mr. Epstein's brother. So your Honor's under a misconception if you think that legal fees saved by the estate necessarily go into a fund that's all going to be distributed to victims. That is not the way it's been set up.

THE COURT: Well, it was my understanding, which may be incorrect -- and, by the way, let's not refer to it as the "Feinberg fund." It's just -- it's claims, it's the victims' compensation claims program or something like that. It's got a name. We'll just call it "the fund." It was my understanding that the claims would be paid out of whatever there is. Whether it all goes to claimants or not is not really the question that I had in my mind; that

there is a universe out there, there is an amount of money or assets out there which is available as the administrator sees fit to pay. The larger it is, the more that is arguably available for the administrator to decide would be appropriate for different victims. It may be that more will come forward, it may be that more victims will not come forward, it may be there's money left over, and it may be there's no money left over. But any money that is currently in the estate, you know, you don't want to see it shrink. Why would anyone want to see it shrink? If the administrator would like to say that, you know, more should be paid, wouldn't it be better that there's more there that could potentially be tapped than having it pay for litigation costs?

MS. KAPLAN: Understood, your Honor. But I have seen settlement funds, for example, in Michigan and other places where the commitment was made that all the funds that were available were going to be paid out to victims. That was very clearly not what was done here. And the only assumption that anyone can make is that once -- and it's not limitless number of victims -- that once the settlement administrators and Ms. Feldman have made whatever determinations they make, that -- we have been told by them that they would see that as being less than

the amount in the estate, and the remainder in the estate will be paid to Mr. Epstein's brother.

THE COURT: They don't have any -- they don't have a particular limit on the amount, do they?

MS. KAPLAN: No, but they --

MR. MOSKOWITZ: No. Your Honor -- sorry. Go ahead. I could clarify this.

THE COURT: Okay.

MS. KAPLAN: This is something that was negotiated, quite clearly, by the side and something -- there was proposals made by the plaintiffs to set up a fund where there would be a commitment that all the money in the estate would be paid out to victims. It's my understanding, after many conversations, that is not the commitment. And in fact, there was Mr. Feinberg and Ms. Feldman told us that they didn't even have a full understanding of the full amount in the estate.

THE COURT: Let me just put some numbers on this hypothetically. And, obviously, these are not the correct numbers; I'm sure there are, you know, millions of dollars -- actually, I'm not sure of anything, but I'm going to assume there are millions of dollars in the estate. But let's just call it a million dollars. There's a million dollars in the estate -- or let's even make it

even simpler than that. Say it's $100,000 in the estate. And so it's $100,000 that could be paid out. And maybe 80,000 of it gets paid out to victims, and there's 20,000 left over and it goes to somebody else. Okay. But if 30,000 gets spent on legal fees or other things, now there's no longer the ability to pay out 80,000. Now there's only 70,000 there. You certainly don't want that to happen. And if there's --

MS. KAPLAN: Yes, but we were --

THE COURT: -- if there's 90,000 left, you know, maybe it could be the administrator would say, you know what, let's pay out 90. That may be, and it's there, and it's available.

MS. KAPLAN: But, your Honor, we were told quite explicitly -- quite explicitly by Mr. Feinberg and Ms. Feldman that that is not the case here. There is more than sufficient funds, as they said, to pay out everyone with excess. And so for the implication to be that by my client incurring litigation costs for the estate, she's taking money from other victims is not the case. If she's taking money from anyone, she's taking it from Mr. Epstein's brother.

MR. MOSKOWITZ: That's -- your Honor, Bennet Moskowitz. That's not correct. And no one -- and I wish

we would not speak for other people who are not on this call. I highly doubt Mr. Feinberg or Ms. Feldman said any of those things. First of all, I don't know where Ms. Kaplan's getting her information about who's receiving what money under the will. It's not based on any facts that I'm actually aware of. So perhaps she knows something I don't.

But your Honor has it exactly correct. What's available to the fund -- and it's called the Epstein Victims Compensation Program -- is not all the money in the world. Right? There's an estate. Within that is a pool of assets available to a program which has no artificial cap to it because we don't know how many victims are out there. That's part of the problem. If Ms. Kaplan does, I would love to know the number. We don't know. But it is absolutely correct what your Honor said. If a million dollars is spent on this case on legal fees, that's taken out of a pot of assets that is there if ever needed for the fund while it's ongoing; that's gone because it's spent on lawyers. So your example was -- absolutely got it correct. It's about what's actually available to pay the people.

So make no mistake. This is not good for the fund process, the spending of assets, which is why --

MS. KAPLAN: Is that why the case --

MR. MOSKOWITZ: -- other people stayed their actions in part. They know that.

MS. KAPLAN: If that were the case, your Honor, then the estate could have made the commitment, which they refused to make and refused to say to the fund administrators that all the amounts in the estate, subject to whatever secure claims are out there, would be devoted to this fund. They have not said that.

MR. MOSKOWITZ: Yeah, and we could debate trusts and estates law and the, you know, theory of how it works in law school, but that's correct, we don't control -- we don't get to willy-nilly say forget what a will says or any other legal instruments; we're going to do what we think is right under Ms. Kaplan's notion of justice. What we've done is voluntarily gone out of our way to work very hard to design a program that so many see the value in that you now -- that this plaintiff now stands alone. And --

THE COURT: Okay. Wait. Hold on a minute. It sounds to me like what you are saying are different spins are not necessarily mutually exclusive. It may be -- and I don't know because I haven't read the documentation about how the program is going to work -- but it may be that it is not required that all assets will be paid to claimants once it's clear how many are coming forward, that every

asset that there is will be distributed to victims. That may well be the case. It may also be that the decisions as to how much to offer and to then distribute is going to be capped at whatever the assets are. And if the assets are X, then that's as much as there could be available to the administrator to make decisions based on if there's less, then there's less available to make the decision based on. And it may be that it's anticipated that not all of the money will be paid out. And maybe that's because there's a concern that some other victim may come forward at a later date, and they want to hold back some money; or it may just be that they think there is so much money that there will be left over. It may be that they're just going to take it as it comes without any kind of artificial limits other than what's in the assets of the estate. But it does seem to me that the more costly the litigation gets -- and everyone knows that litigation can be very costly -- and it could be meaningfully costly. I don't know if it is a drop in the bucket or if it costs a million dollars, if that is a meaningful million. But it could be that the continuing costs of litigating the case could deplete assets to some extent that could otherwise potentially ends up in the hands of victims being compensated through the fund. And even if that's not -- even if they anticipated that there's

going to be more than enough, the universe is not absolutely infinite of what there is to pay. It is whatever is in the estate. That is the outer bound of what there is that's possible. So if money is paid out of the estate for lawyers, then there is necessarily less money in the estate.

I am going to urge counsel to litigate this case, what remains of it, in as efficient a way as possible with as much cost savings as possible. Not to -- you know, I'm not going to tell lawyers how to staff matters, but keep an eye on it. I'm not going to tell lawyers how much to spend on squabbling, but try to keep it down. Everyone knows where money gets spent in litigation. It gets spent on electronic discovery. Well, try to work together on a protocol so that you don't have to do it twice, because do-overs are costly. Try to figure it out the first time, and try to live with what you agree on. And if you need to make some minor adjustments later because something surfaces, you know, try to focus on keeping the costs under control. Okay? Because, you know, no offense to counsel, but that's not where we really want to see money go.

I'm going to address the disputes that I have in front of me. I'm glad to hear that on plaintiff's side you think you can resolve your issues through good-faith

consultation. That's great. Please try to do it in as, you know, civil and efficient way as possible.

I have three clusters of information that have been brought to me by defendants that need my attention. One has to do with the Rule 26(a) disclosure on computation of damages by plaintiff. One category has to do with communications with either the press or with other counsel. That's really two categories, but it's -- yeah, I guess it's two categories. And then the last one has to do with plaintiff's medical records during the relevant time, thereafter, whatever.

So let me just take them in order. With respect to computation of damages, I've taken a look at plaintiff's Rule 26(a) disclosure that was attached to the papers. I've taken a look at the arguments made by counsel in the letters. The computation of damages that was provided on its face does not comply with the rules. Now, I understand that there may be an expert coming down the pike who may have something to say about damages, and it may be that there'll be a need to supplement as evidence comes out. But that does not excuse a computation that, to the best of the plaintiff's ability, complies with the rules at the time the disclosure is made, which means you set out the amounts that are known to you in different categories so

that if you, for example, have doctor expenses, medical expenses that you think are a proper category, you pull together the evidence that you have and you put down the number that's the total of what you believe the medical expenses are, and you say I'm going to be providing to you the support for this. If more comes out, you supplement it under Rule 26(e). And you say, "I have more. It was incomplete. That number's going up. Here it is." And if you want to flag for defendant that there's a likelihood that certain numbers may rise as you, you know, uncover more documents, that's fine. You supplement it. That's what supplementation is all about.

If you have a category of lost wages or something, again, you quantify it, you put it down, you provide the documentation that supports it. You don't just say, "We can't do it," because of course you can; you just can't do it perfectly yet. You can do it to the extent you can, and you supplement it later. I have had cases where someone says an expert is needed, and sometimes I've moved the expert discovery up so that the damages computation could be done before all the rest of fact discovery was over so that the defendant could have the benefit of understanding what the claim was before then deposing certain fact witnesses about it.

That may or may not make sense, but the computation of damages in the disclosure does need to be modified; it is not adequate under the rules. Understanding that it may change and understanding there may need to be the need for expert testimony to modify some of the numbers or to add in certain figures, you lay out what you can and you lay it out with specificity as the rule requires.

MS. KAPLAN: Your Honor, we will do that. The vast majority of the damages here is going to be pain and suffering and future mental health costs.

THE COURT: You put a number on it -- you put a number on it as best as you can; and if it gets changed, it gets changed. But you --

MS. KAPLAN: Well, I was just going to say something. I was just going to say something, your Honor, following up on what you said. We were going to put that in. We have retained a very illustrious expert, Dr. Don Hughes, who's testified many, many times about these issues. We would be happy, if defendant prefers, to move up the expert discovery so that they can get that. But without Dr. Hughes's report, it really will be guesswork for the vast majority of it on our part.

THE COURT: Well, it's not going to be guesswork

if there was --

MS. KAPLAN: That's just the reality of it.

THE COURT: -- an out-of-pocket medical expense; it's not going to be guesswork if there's lost income, that she says, "I would have had this job, and I couldn't have this. I lost my job. I was making this much money in the past." You know, you can make some estimates, and you can say these are estimates to the best of our ability now, and it may get modified with an expert. But you can't just --

MS. KAPLAN: We understand. As long as they're aware that the vast majority of it is probably going to come through Dr. Hughes, that's fine with us. We just don't want to be charged, when the number goes way up with Dr. Hughes, with being -- in any accusation that we're not being full and complete.

THE COURT: Well, you've retained this person. You can talk to this expert and you can say, "Give me something ballpark that you think is, you know, based on what you already know is likely to, you know, to hold." And you don't have to make up a number from counsel's head and then totally separate from the expert's head. You've hired somebody; presumably you're in consultation.

MS. KAPLAN: All right, well, we will do that, your Honor. I just offered to move up expert discovery if

they want to do that. That's exactly what we were --

THE COURT: Well, that's what -- you talk with your adversary about it because there's no absolute magic that this must happen first and then that must happen. YOU know, what you're trying to do is litigate the case efficiently, save unnecessary costs. Experts can be very expensive. If you think you might want to participate in the claims program and you decide to do that, then it may make sense at that point to have at least a brief stay to avoid the clock running so that you avoid unnecessary expert expenses or something else that can really, you know, rachet up the dollars spent on the case. So --

MS. KAPLAN: That's not an issue from our side, your Honor. Our expert has already -- is drawn and willing to do it. So that's not an issue.

THE COURT: All right. It may be an issue on defendants' side if they're going to have a counter-expert or a rebuttal expert; they may want some time to save those costs. And I might be favorably inclined to say if you're participating in the program, yes, I'm going to hold off on certain of this discovery. I want you to be able to have good-faith conversations about where the particular high-expense items are that maybe could be done later, like, in 30 days or in 60 days if, you know, if you do decide to

participate in the program, if it doesn't result in a resolution and you have to come back with the understanding, like I said, the case is not going to be tried that fast. It's not going to be tried in 30 days or 60 days no matter what. So, you know, having that much of a delay is probably not going to affect the ultimate resolution date.

So think about it, talk about it, keep an eye on the expenses. And come back to me, either of you or both of you, with rational proposals if you think something should be put on hold.

With respect to communications with the press, I didn't quite understand -- I mean, I think that the parties are -- one seems to be talking about if anything was said that relates to the case, and the other seems to be saying anything that may have related to plaintiff's specific allegations. And it's neither one of those for the test for relevance. It's whether it's related to a claim or defense that's been asserted in the case. And it may well be that there are statements that were made that relate to a claim that's been made in this case and that would be relevant and that could be identified, could be found. Maybe it was in, you know, an email or something. And it should be produced. On the other hand, if it's just

anything at all, like including about the claims program or something, that wouldn't be relevant to a claim in the case or to a defense that's been asserted in the case. So I think there's probably a middle ground there. I don't think it's good enough for plaintiff just to say, you know, we object to providing anything that's not related to the specific allegations because I don't know that specific allegations means the same thing as claim, which is a relevance test. That sounds --

MS. KAPLAN: Yes, we have no problem producing documents with journalists relating to the claims in the case. I'm quite confident there won't be any, but we understand, your Honor, that --

THE COURT: Well, go do a reasonable search.

MS. KAPLAN: Yes. Well, we have, but we will again, your Honor. The real debate here was statements that were made by me to members of the press about the claims fund.

THE COURT: Okay. You've been jumping in on these points, and I haven't really given an opportunity to defense counsel to jump in on these points. Before I get to the next category, do you want to say anything further about the damages computation or about the communications --

MR. MOSKOWITZ: Yeah. So, first, if I could just back -- Bennet Moskowitz, your Honor. I apologize -- get into that habit.

If your Honor recalls, the reason this all came about this way with this jammed-up deposition schedule is because we had originally just asked for what we thought was quite reasonable, let's move all of these out 30 days so we can get all this done in a reasonable fashion. My one concern that I haven't heard addressed yet -- and perhaps because I hadn't expressly raised it -- is, you know, I'm still of the view that, look, we're trying to get these depos done on this schedule; that's what we agreed to strive for with opposing counsel. They have indicated to me that you'd better get them done by July 27 because we think that's how long you should have.

I'd like to just say now and confront the issue that, look, we will try to hold these dates, but already we're having trouble, say, serving one of the people in particular, one of plaintiff's friends. There's no reason that if we must, based on deponent's reasonable availability, these depositions can't go into August. There's no magic number. And I would just like to include within the directive of the court to confirm that my understanding of that is that that would probably include,

if it makes sense, to having some of the depositions go beyond July 27, not five months from now, but some time in August. I don't see any problem with that, and I figure while we're talking about this, that I'd love to get clarity about that point. So I could stop there because that's one of about three points I wanted to raise.

THE COURT: Yes. Raise your other points. So far we're up to computation of damages and communications with the press on the specific document issues.

MR. MOSKOWITZ: Sure. I believe the -- I apologize; the calendar was addressed before this. I don't want to lose sight.

THE COURT: Right.

MR. MOSKOWITZ: So as for the press statements, we're not looking for statements about the -- we didn't say give us everything you said about the claims program. What we want is the good-faith search for things that may be relevant, not just to a claim, right, but to our defenses. If, for example, plaintiff's counsel spoke to the press or other plaintiff's counsel -- I know we're not there yet, but it's the same issue -- about their view of the alleged trafficking scheme, about the relative strength of claims against the estate, it's not that we're trying to get all discovery about all the other actions; it's just that, to

the extent this plaintiff's counsel was part of those discussions and made statements, that is necessarily informed by this plaintiff's allegations even if in that communication it's not the express, "This plaintiff says Mr. Epstein did X, Y, Z." It may not say that, which is what I understood plaintiff's counsel's position was, "Well, we didn't say anything about specific claims." But your Honor is correct that's not the limit on discovery. But it would be highly relevant if, for example, plaintiff's counsel says to members of the press, you know, "Our view of claims against Epstein are X, Y and Z." I get why they may not want us to see that, but it's not privileged, it's highly relevant and should be produced. So I look forward to the reasonable search for those, and I'm just informing the Court of how I view the potential relevance there. It's not just the claims; it's also the defense.

THE COURT: I didn't understand --

MR. MOSKOWITZ: I will --

THE COURT: I didn't understand how you define what the defenses are and what's relevant to your defenses. What are the estate's defenses that you're looking for documents that it's relevant to?

MR. MOSKOWITZ: It would -- yes, sure -- it would

really go, for the most part, to issues of damages, you know, alleged harms. There could be, among plaintiff's counsel, discussion of the claims relative to each other. And to the extent that --

THE COURT: But that's not what the --

MR. MOSKOWITZ: -- statements like --

THE COURT: -- that's your category about talking with other counsel.

MR. MOSKOWITZ: I don't know. I mean, I haven't seen a single email from the press. I was -- you know, we were given the categorical, you know, "You don't need it."

THE COURT: Do you think there's going to be an email to the press where this plaintiff's counsel said, "Our client's claims are, you know, less severe than the other plaintiffs' claims"? The odds of that seem to me none.

MR. MOSKOWITZ: Yes, no, that would certainly surprise me, your Honor. But statements of that nature going the other way would still be relevant. And I see a lot of press stories with this plaintiff's counsel and with other plaintiff's counsel.

THE COURT: Going the other way --

MR. MOSKOWITZ: No, just in general, that all allegations that are (indiscernible).

THE COURT: Wait a minute. You're not looking for --

MS. KAPLAN: Your Honor --

THE COURT: -- you're not looking for -- wait a minute. I don't even understand what defense counsel is saying here. When you say "going the other way," you mean communications from the press to plaintiff's counsel?

MR. MOSKOWITZ: No, no, I apologize. Going the other way in terms of the substance. So even if plaintiff's counsel says, "Our claim is stronger for the following reasons," well, it's said to a member of the press, it's not privileged, and that's highly relevant to their view of this case. It could well be that the expert report's going to echo some of the sentiments. We're entitled to see that information.

THE COURT: Ms. Kaplan?

MS. KAPLAN: Your Honor, I think I can cut this short. I've been a member of the bar and this court for 25 years, I'm an officer of the court. I'm very well aware of my obligations and a duty of candor to the Court. I'm the only one on our team who spoke to the press. And every statement that I made to the press, which you can Google and find out, is about the settlement fund. No statements were made to the press, particularly because they are

privileged, about our client's claims, her facts, relative claims. And here where we're even more sensitive, putting aside the privilege issue, because she's pseudonymous. So there was --

THE COURT: I'm sorry, because what?

MS. KAPLAN: So there was absolutely zero conversation about --

THE COURT: Wait, wait. I'm sorry because --

MS. KAPLAN: Our client is pseudonymous. She's anonymous. We couldn't say --

THE COURT: Oh, she's anonymous, anonymous.

MS. KAPLAN: -- even if we wanted to have a nonprivileged conversation, anything we could have said could have potentially divulged her identity. There were no such conversations with anyone in the press. Every conversation, which is what Mr. Moskowitz has seen, if you Google my name, is about the settlement fund.

THE COURT: Okay. So --

MS. KAPLAN: And this is what's frustrating, your Honor, because we've said this to them countless times. I don't even know why we're still on this issue.

THE COURT: All right, I will take that representation, and I'm going to assume that there are no statements of the sort that Mr. Moskowitz is suggesting

could be out there. You know, make a diligent search of what you've got, if you have emails or anything like that. If there's something that relates to a claim that you've asserted or a defense that's been asserted, that's the test; produce it. If there really isn't, there is nothing, you make a representation there really isn't, I've searched and there just isn't. And you can have a more specific conversation with each other, and Mr. Moskowitz can say, "Did you look for anything that might have talked about this or that or the other thing?" And you can clear it up. And I'm not going to waste time ordering production of documents that don't exist or that you can figure out between you exist or not.

All I was saying was that when you talked about particular allegations, that sounded too narrow. All right --

MS. KAPLAN: Understood, your Honor.

THE COURT: Okay. With respect to communications with other counsel representing other plaintiffs in this case, at a first level of analysis, I suspect that we have a valid common interest privilege or work product privilege that there's just been no showing that it would be -- that there's need to overcome that work product immunity. It seems to me the kind of case where, you know, if there were

communications among counsel about their clients' claims, they would likely be protected under a common interest doctrine or they would likely be talking about litigation strategy, and that would likely be protected as work product. So, you know, absent some particularized showing of something that you're trying to get at that you know exists or you've heard about or something, I'm not going to direct plaintiff to be making production there.

This is not -- this is without prejudice. There could be a further application on this if there's something more specific, but I'm just not going to say as a wholesale matter go and produce all your communications with other counsel about your client's claims. So I'm ruling in favor of plaintiff on that one, at least at this time.

The medical records, this I find a little bit confusing. Certainly, medical records from the time of the alleged abuse and thereafter, if there is a claim of lasting emotional harm, certainly any records regarding mental health care have been put at issue. And I'm assuming she's alleging much more than garden-variety emotional distress and that -- that's correct, right?

MS. KAPLAN: Yes, your Honor.

THE COURT: Yes. Okay. So she's put her mental health, her emotional state, at issue. She is going to

have to produce the mental health records both from the time it was contemporaneous with any alleged abuse and going forward into the future if she's claiming that her injury has lasted, because that's what she says, that's entitled to be tested. And to the extent there is privilege, that would be waived.

Now, with respect to physical issues for other sorts of doctors, they're a little unsure because when I looked at the complaint because defendants directed me to allegations in the complaint and now unfortunately my -- oh, here it is. I've got it.

We just lost someone. Let's make sure we didn't lose counsel. Do we still have Ms. Kaplan?

MS. KAPLAN: I'm still here, your Honor, yes.

THE COURT: Mr. Moskowitz, are you still there?

MR. MOSKOWITZ: I'm still here, your Honor.

THE COURT: All right, we'll go with the two of you.

So I have here the complaint. And defendants referred me to paragraph 56, for example, where it says, for example, that plaintiff had symptoms such as a rapid heartbeat. Now that, obviously -- I'm not a doctor, but I think it's pretty commonly known that can be related to, you know, anxiety or fear or something like that; people's

hearts can race. On the other hand, there might be an underlying medical condition or it might have caused a medical condition, or it might be treated by a doctor who's not a psychiatrist. She may have gone to a cardiologist -- it's possible.

There's an issue here about difficulty eating. Well, that may be a symptom of a psychiatric condition. On the other hand, she may have had a physical problem. She may have had, I don't know, some reflux or something where she had to take medication, where she was treated. There could have been something related to that. Unclear simply from the allegations.

Difficulty falling asleep or staying asleep. And it may be that she went a general practitioner who prescribed her with sleeping medication or who monitored that and, you know, tried different kinds of, you know, sleeping pills if that was going to help her or not help her. So it may not only be mental health care providers who might have knowledge relevant to particular things that are alleged in the complaint. Not clear.

Now, that doesn't mean -- oh, and another thing is if she is claiming that she was sexually abused, I don't know if she ever was examined by a medical professional in connection with any alleged rape. If that happened, if

there was a rape kit, for example, it would be relevant for sure.

MS. KAPLAN: Of course.

THE COURT: It may not have happened that way, right, but there may be medical records; I mean, you know, God forbid if she was sexually abused and she got pregnant and there was -- you know, and she had an abortion. I'm making this up.

MS. KAPLAN: Right. No, no, no. We --

THE COURT: Okay? I know nothing about the case. But my point is there may be medical records from doctors other than mental health providers that would be highly relevant to the claims that she's asserting in this case. That said --

MS. KAPLAN: We agree.

THE COURT: Okay. That said, if she had twisted her ankle, you know, walking down the street one day and went to an orthopedist, that would have no relevance to anything, okay, unless --

MS. KAPLAN: Correct, your Honor.

THE COURT: -- somehow it came out at a deposition that it's relevant to something. So the medical -- I think that the line for only mental health care might be too narrow, but all medical records from any kind of provider

seems to me to be overly broad. And I think there needs to be some discussion about that to sort that out. And certainly, if the plaintiff is deposed and something comes out that opens the door to some additional records, the risk there is that if I say yeah, you know, she said this thing now about some -- about being, you know, treated for digestion problems or something and now there are additional records and now once you get those records, she might have to go back and sit for deposition round two, which nobody wants. Nobody wants it because it's more costly, and plaintiff certainly doesn't want to have to go through this twice.

MS. KAPLAN: So we understand that, your Honor. We are absolutely willing to give all medical records, not only for mental health treatment but for any physical symptoms that we allege arise from the abuse and from the mental health problems that she has suffered from. I don't think that's the dispute here. I think they just say they want all of her medical records.

THE COURT: Well, it may be a little bit difficult to parse out because if she has a general practitioner and she sees that person for complaints like I can't sleep and that person prescribes sleeping medication, and she also goes to that person because, well, I don't know, she -- you

know, she's got lower back pain or something, she's got a headache, something else, you know, that doctor may not parse it out in his or her records that -- you know, and to ask the doctor to go through and produce this but not that can sometimes be difficult. So that's --

MS. KAPLAN: But, your Honor, I don't -- I don't -- with respect, I don't think we have that problem here. Our client is very poor. She was a street kid when she was raped by Jeffrey Epstein, a 14-year-old street kid. She's not a wealth -- she's a very poor person today. She does not go to doctors, certainly, for everyone who knows me, the way that I go to doctors when I have a medical condition to be treated. There's very few doctor records here, and the doctor records that she does go to are for people like when her child was born or to get regular obstetrics exams, etc. So it's not like there's this huge universe and she's going to a zillion different doctors the way, quite frankly, I do, your Honor. She is a very low resources, very low income, does not frequent doctors in her --

THE COURT: What is the -- what is the dispute really about here? What are the records that you do not want to produce that exist --

MS. KAPLAN: We don't want to give all of the

records --

THE COURT: -- but are not relevant?

MS. KAPLAN: Every year she goes in for a pap smear. I don't think they're entitled to her pap smear records. It's just -- I mean, people go to regular doctors that have nothing to do with what happened here. She's not alleging -- she's alleging no physical injury from the rape. And I don't think they're entitled to that.

THE COURT: Okay. But if she alleges that she was raped and she saw a gynecologist about that who did --

MS. KAPLAN: She was -- didn't happen. If she had, we would have given it. She was a 14-year-old street kid.

THE COURT: Okay.

MR. MOSKOWITZ: Your Honor, may I respond to this?

THE COURT: Yes.

MR. MOSKOWITZ: Yeah, so this is the problem again. Here we get again a blanket assertion of, "You get these; you don't get these." Here's the problem -- and your Honor actually alluded to this a little earlier. It may be that I, as a layperson when it comes to medicine, goes to what I think is a regular exam. But there could be ten close reasons that that exam is then relevant to something I didn't know it was relevant to. Doctors take

notes, often sometimes about mental health, even when they're not the mental health care provider. Doctors prescribe things. You can go for a "regular" dental procedure and get prescribed opioids that could very well lead into things that are very relevant here. And because it's a small universe, what we are saying is please don't be so exclusive in saying wholesale that you get these but not these. We need our experts to look and say what is relevant. We can't have that decision made on the plaintiff's side.

THE COURT: Okay. All right.

MS. KAPLAN: Your Honor, that's --

THE COURT: No, no, no, no. Stop. No.

MS. KAPLAN: If she goes to a dentist --

THE COURT: Before you jump in -- before you jump in, I'm going to side with you. You don't have to jump in. Okay? So stop for a second.

MS. KAPLAN: Thank you, your Honor.

THE COURT: All right, there is a -- once again, there is a middle ground here. First of all, all the mental health records get produced. Second, if she had a primary care physician and, you know, she was having difficulty sleeping, if this was the person that she was talking to about that or any of the symptoms that are

alleged in the complaint, then that person's records should probably be produced unless there is something that is, you know, easily carve-outable from it or something. But it's very hard for a doctor to parse through records and produce some and not produce the rest.

Other kinds of care providers, such as a dentist, no. You don't just get a dentist's records because you're speculating that maybe she got opioids from a dentist. If you have a psychiatrist's records, if she had psychiatric care or some kind of therapist records for mental health care, and you see in the notes something like, you know, "She's really upset today about her cancer diagnosis," right? Well, it's going to open the door that there's something else that's a major stressor and is affecting her emotional health. Right? If there's some indication that she is on medication in the mental health records or in the general practitioner's records where that medication can affect somebody's mental status in some way, okay, it might open the door to a little further discovery about what the deal is with this medication. But you don't just get to fish; you don't just get to speculate and get any and all providers.

So you try to figure out where the rational line is, because I hear a lot on defendant's side in any kind of

case that involves mental health -- or emotional distress, I should say, pain and suffering -- mental pain and suffering, that, oh, maybe she had a terrible medical condition or maybe something else was going on medically that could have affected that. Well, sure, lots of things could go on in a person's life that's a stressor. They could have lost a job, they could have had a death in the family, there could have been something else. It doesn't meant you get to fish for everything about their lives. If you get some discovery that suggests that she was in fact, you know, significantly affected by something else that's going on in her life, yes, it can open the door to discovery about that something else. But you don't get to fish for everything.

So I don't know how many providers there are here. You have identified three treating physicians as witnesses. These are all mental healthcare professionals? For the depositions?

MS. KAPLAN: No, I don't think any of them are. Is that correct, Kate?

MS. KATE DONIGER: They are, I think, almost exclusively primary care physicians who she consulted about primary care issues and also mental health issues.

THE COURT: Okay. So you've got the primary care

physicians identified, I guess, in your Rule 26(a) disclosures because that's why defendants asked for their depositions. Right?

MS. KAPLAN: Yes.

THE COURT: So they have some relevant knowledge. Unless there's a way for them to parse their records and produce only those things that relate to a mental health issue, sleeping issues, diet issues, you know, rapid heartbeat issues, unless there's a way where they can segregate that out, or maybe it's easier to do it the other way that, you know, if she had a fracture, you separate and say, "We don't have to produce the documents related to the orthopedist that we sent her to for a consult." But I think you're going to have to produce the records of the doctors you identified as potentially having knowledge relevant to the case. And I don't know how many other doctors there really are. I'm going to say no on dentists, if she went to a dentist. If she went to a regular OB-GYN type provider on a regular basis, if there was nothing related to her -- to any allegations she's making here, if there's no -- if she's not claiming any physical harm, if she's not claiming that she was ever examined in connection with any rape here or anything, then I'm going to say no for now. I'll say that with respect to a gynecologist,

I'll say that without prejudice if defendants want to show me some case law that in a case alleging sexual abuse, that opens up the door to all gynecological records. I have my doubts, but that may be possible, and I'd look at law if you can find me something. But any doctor you --

MS. KAPLAN: Understood, your Honor. We --

THE COURT: Yes?

MS. KAPLAN: -- we're not alleging any physical injury from Mr. Epstein's rape of her when she was 14.

THE COURT: And you said she was not -- she was not examined at that time?

MS. KAPLAN: She -- it's not -- no, it's not our understanding that she was examined. Again, she was a homeless street kid.

THE COURT: So there's no -- there's no physical evidence as to whether or not she actually was raped at that time? That doesn't exist, as far as you know?

MS. KAPLAN: That's correct, your Honor. We have none to offer, and I don't think any exists.

THE COURT: Okay. All right. So I'm not sure what doctors are going to still be at issue here in terms of what there is to argue about. It doesn't sound like there's that much to argue about. Defendant's being overbroad, but if you've identified the person as having,

you know, somebody who's got relevant knowledge, then their records should probably be produced. Right?

MS. DONIGER: Kate Doniger, your Honor.

MR. MOSKOWITZ: Your Honor --

MS. DONIGER: If I could just add one thing? We have produced all of the records for the providers that we identified in our disclosures. That is our understanding as far as --

THE COURT: You produced the records or you -- you produced the records, or you --

MS. DONIGER: All of the records.

THE COURT: -- produced the HIPAA release?

MS. DONIGER: We've produced the complete records already.

THE COURT: Well, then, you should produce the HIPAA release because the defendant's entitled --

MS. DONIGER: We've also -- we've also done that. We've also produced the HIPAA release --

THE COURT: Okay. So you did --

MS. DONIGER: -- so that they can get the records from these -- yes --

THE COURT: From the providers --

MS. DONIGER: -- we've already done that.

THE COURT: Hold on. Talking simultaneously even

when it's me is not a good idea.

So with respect to the doctors who you've identified in Rule 26(a)(1) disclosures as people with potential knowledge, you've already provided, a, records; and b, releases, and defendants are free to get those records from those doctors.

MS. DONIGER: That's correct.

THE COURT: And, number two, if there's any mental health records other than those, you've provided releases for those. So what's left? Dentists and OB-GYN? Is there anything else?

MS. DONIGER: Well, dentists, OB-GYN. Part of the way that -- you know, plaintiff did not have one primary care doctor who she sees consistently for all her issues. That's just not how she accesses medical care. So she has gone to urgent care for various issues. She may have gone to the ER for, you know, colds, sinus infections. We actually don't have a specific list, and we think it would be very difficult and burdensome to --

THE COURT: Hold on. Hold on, please.

MS. DONIGER: -- to create one, but --

THE COURT: Hold on. Mr. Moskowitz, are you still there?

MR. MOSKOWITZ: I'm still here, your Honor.

THE COURT: Okay. Ms. Kaplan, are you still there?

MS. KAPLAN: I am, your Honor.

THE COURT: Okay. I heard somebody drop off.

Okay, so urgent care, hospital emergency rooms, urgent care, I don't care; I don't think defendants should care about a sinus infection. On the other hand, if she went to urgent care because she couldn't sleep and needed sleeping medication or because she was having panic attacks or something and she needed to go somewhere and she didn't have a primary care physician so she went to an urgent care clinic, that might be a place that has records. I don't know why she was going wherever she was going, but that needs a little bit of exploration because defendants are entitled to records regarding mental health and regarding these various conditions that may be associated with mental health for which she may have sought care. So --

MS. DONIGER: And we don't disagree with that, your Honor. We're not aware of any other place where she has received treatment related to the conditions that she alleges in the complaint, and we've specifically represented that we would produce documents and records relating specifically to those conditions. So --

THE COURT: I'm left with the same question, which

is what exactly are you guys arguing about here?

MR. MOSKOWITZ: Yes, your Honor --

THE COURT: What's the universe of documents that plaintiffs will not produce?

MR. MOSKOWITZ: Your Honor, if I may, Bennet Moskowitz. Part of the problem here is until this call, they would never tell us this. We at one point said, "Well, will you list out the other things that are out there that you don't think are relevant?" That was declined. So perhaps we could have avoided this back-and-forth. We're seeking all of it because we don't know. This is the most I'm hearing about this. So, you know, this warrants further conversation along that line that we suggested perhaps a month or so ago.

THE COURT: Look, look, do yourself --

MS. DONIGER: I think that --

THE COURT: -- save yourself time at plaintiff's deposition. All right? At plaintiff's deposition defendant's counsel will say, "Tell me all the places you've gone and tell me the reasons you've gone there," because if some place is identified where counsel thinks that, you know, she may have actually gone for mental health care or for, you know, to try to get a sleeping pill prescription or something, then counsel's going to go back

and ask for a release for that place, and then you're going to circle around. And once again, you don't want to have to have plaintiff come back.

Go through the different places with plaintiff that she went to for care, the different providers, a dentist, an urgent care facility, an emergency room or whatever it may have been. Go through the places, tell defense counsel what you understand about them and why you think that it's not necessary to produce releases for the records there. If you have a particular discrete disagreement on something, you know, it may have to come to head after a deposition. But you want to try to avoid the testimony of, "Oh, yeah, I went there because, you know, I was worried I was having a heart attack because my heart was beating so fast," well, then it's going to be relevant. Right? And then you're going to have to go back and produce it. If she says, "I went there because I burned myself by accident with some hot water from the stove," you know, then it's not going to be relevant, and nobody's going to say you're going to get the releases. But if you have a little bit more of a conversation ahead of time, you should be able to ward it off, because I don't hear plaintiff's counsel being, you know, completely -- to be completely resistant or refusing to produce records from

doctors for physical care to the extent they might have any bearing on the claims that are being asserted here.

MS. KAPLAN: No, no, absolutely not, your Honor. For example, we've given -- there are cardiology tests that are clearly relevant to the allegations we have, and we've produced those. We don't disagree.

THE COURT: So -- right. And once again, it's not just the tests, it's also the release for that provider.

MS. KAPLAN: Yes, no, we understand.

THE COURT: The defendant's entitled to get it -- to get the documents on their own and to make sure the universe is complete. Okay?

MR. MOSKOWITZ: Your Honor, I have one more related but different point on medical records that I would like to raise, because I think some clarity, with the Court's assistance, would be helpful. I can't get into the specifics because it pertains to some of the information that's been redacted now from one of the exhibits, but there is disclosure by plaintiff that relates to certain things with potential other medical implications. And I want to be careful here because what I'm hearing plaintiff's counsel continue to talk about is they are going to look for things that relate to medical, either physical or mental, related to the claims of what

Mr. Epstein allegedly did to this plaintiff. However, what someone else may have done is also going to be highly relevant to my experts. And we're entitled to see --

THE COURT: I don't quite understand -- I don't quite understand what you're trying to tell me here.

MR. MOSKOWITZ: Yes.

MS. KAPLAN: I don't want -- and I'm very uncomfortable, especially given the nature of the allegation in this case, if we want to have a -- if your Honor wants to schedule an *ex parte* conversation or you want me to talk to mister -- I mean, without reporters on the phone or you want me to talk to Mr. Moskowitz separately, I'm happy to do that. But because I don't know what he's talking about now, I'm quite concerned about the --

THE COURT: Yes. It sounds to me like defendants' counsel is trying to tread carefully, which leads me to believe there may be something of a confidential nature. Talk to each other first; see if you can reach a resolution on it with the guidance that, look, if it bears on the claims that are going to be made, she's going to have waived any privilege or confidentiality, and she's going to have to produce it. If it really doesn't bear on the claims that are being made, then I'm not going to require

it to be produced because just because someone has put certain mental health or even medical conditions at issue doesn't necessarily open the door to anything and everything about medical records. And if you're talking about something other than medical records, talk to plaintiff's counsel about it first before you raise it with me. Okay?

I want to say something --

MR. MOSKOWITZ: Yes, will do, your Honor.

THE COURT: Okay, so summarizing on these various issues that were raised, I'm directing plaintiff to modify the computation of damages and the Rule 26(a) disclosure with the best numbers they've got at this time and the documents specifically that support the different numbers. If you're making a rolling production, explain as you do this is further documentation to support that number we put in here. And if you need to supplement as you go, even more than once, supplement under Rule 26(e). If you want to move up an expert report, talk to opposing counsel about whether it makes sense or it doesn't make sense. Keep cost in mind; keep the overall trajectory of the case in mind and try to do something that is intelligent and cost efficient.

With respect to communications with the press, I

accept plaintiff's representation that there were no communications with the press about claims or defenses, only about the settlement fund. But take a check, you know, at emails or any other communications you may have had. Double-check; don't be overly narrow on what's related to a claim or defense by only looking for what's related to plaintiff-specific allegations, because it's broader than that in terms of a claim, and it's certainly broader than that in terms of a defense. And have a further conversation with counsel if you have any doubt on that issue.

I'm not requiring plaintiff to produce documents concerning communications -- oh, somebody has dropped off. Did we lose either Ms. Kaplan or Mr. Moskowitz?

MS. KAPLAN: You're still stuck with me, your Honor. I'm here.

THE COURT: Mr. Moskowitz?

MR. MOSKOWITZ: Yes, I'm still here, your Honor.

THE COURT: Good. Okay. I'm not requiring plaintiff at this time to produce communications with other counsel on other cases in this court that are cases like this one. That's without prejudice to coming back later to say, "Look, I am aware of something more particular here that I have concern about that I don't think is either

privileged"; or if it is work product, it's -- "We have a substantial need. It's information we can't get by other means, and it should be overcome." But for now I'm saying no.

And on the medical records, we've just had a lot of discussion. Talk to each other. Yes, produce all the mental health records; yes, produce anything relevant -- and releases for -- anything relevant to any of the assertions that are being made. But that's not free rein for defendants to be asking for any and all medical records of any kind.

Now, I want to address the timing of the close of discovery in the case and the timing of depositions. What I was trying to get you to do when I said go talk to each other about it, I'm willing -- obviously, I'm willing to be flexible with the close of discovery. Close of fact discovery, close of expert discovery, whatever it may be, I'm willing to work with you to accommodate you with deadlines that make sense. Honestly, I think that if plaintiff may be participating in the program, it may make sense to put certain things off that might be particularly costly to see if by any chance it's not necessary to spend that money.

In terms of depositions, I care more about your

working well together and having a plan to get them done than I care about squeezing them into the month of July. If you've got some clear difficulty getting ahold of somebody, if you think it makes more sense to put some a little bit later because you're hoping you can do an in-person deposition instead of a remote deposition and you're hoping things will open up a little bit more and it will be a little easier and a little safer, I'll work with you on that. There isn't a huge rush because it's not getting tried so fast and because there is a possibility of a resolution to the plaintiff's program, and both of those things counsel in favor of doing it, you know, sensibly as opposed to unnecessarily, you know, rushed and slammed through to get it done fast. That doesn't mean it should drift forever; that doesn't mean, you know, the case shouldn't get resolved in a reasonably prompt fashion. It just means that Mr. Epstein is correct, if somebody -- if it's easier to get someone deposed in August or if there's some more records coming in that you think would be relevant to that deposition and you want to have them fully in hand before the deposition, be sensible. Work together. Come up with a schedule that makes sense, that works, and preferably that allows there to be some savings of money in case the case can get resolved through the claims program.

I don't think that the anticipated length of time in the claims program is -- I don't know that much about it, but I didn't think it was going to be something where it would be months and months before there's a dollar number put on a claim. Is that right?

MR. MOSKOWITZ: That's correct. And, your Honor, if I can for the record, you said Mr. Epstein when I believe you went to refer to me, Mr. Moskowitz, so --

THE COURT: Oh, I'm sorry. I'm sorry. I certainly did not mean to call you Mr. Epstein.

MR. MOSKOWITZ: No, that's okay. I just wanted a clear record.

THE COURT: Absolutely not. Absolutely not. Well, Mr. Epstein cannot be on this call, in any event.

MR. MOSKOWITZ: Correct.

THE COURT: So I could not possibly have been referring to him.

MR. MOSKOWITZ: That's right. So --

THE COURT: Mr. Moskowitz -- I'm sorry.

MR. MOSKOWITZ: Yes, correct. And he's not even the client. But, in any event, yes, the claims program's speed. That's correct, it's not supposed to be months on end. In fact, it's done on a rolling basis. If someone -- the way I understand it is if someone comes in, say,

tomorrow, when they start receiving the actual, you know, here's our claims submission, if person A comes in with a complete set of documents for purposes of the administrator being able to in her judgment determine that claim, it could be weeks, six weeks, you know, less than two months, for sure, potentially -- like I said, even closer to a month. If someone else comes in and it's all incomplete, well, then, it's on that person to fill the gap. But it's, in any event, not months on end and much quicker than litigation.

THE COURT: Here is my suggestion. Plaintiff's counsel says plaintiff needs certain information through the discovery process in order to present her claim in the fullest light and maximize her chances of having a favorable recovery with the fund. So prioritize that so that she feels comfortable going and presenting the claim. The depositions of her doctors, of her friends is not something that plaintiff is going to need; it's not evidence plaintiff needs. That's the evidence defendant wants to, you know, make sure the i's are dotted and the t's are crossed before going to trial in this case. That's evidence defendant wants. So that's not needed by plaintiff to go forward with the claims process. If there are documents in particular that plaintiff wants to get

ahold of or if you want to pin down the testimony from these women who booked massages and find out if they're really taking the Fifth and get that, you know, get that down on paper, you know, then maybe you'll have in hand what you feel you need. If at that point you decide that you want to take a shot at the claims process, maybe at that point we stay some of the discovery that defendant wants, with the understanding it will happen in a pretty expedited fashion if you come back to the court. But we save that money, you know, save unnecessary expense.

All of these things are things that you should talk about and that you should try to work on cooperatively with the -- you know, the logical goals of getting plaintiff what plaintiff feels is needed for this. You know, if plaintiff's going to go to the claims process, make it most likely to be successful for her to resolve the claims, to save some money. You know, if we can save the cost of defendant having an expert here, that's money. If we can move a few depositions to August instead of July, I'm willing to give you that time to do that; you know, to get some records in hand first that might be outstanding to, you know, do it at a pace that's not breakneck. I realize it's not necessarily breakneck to do 11 depositions in a month, but -- especially if some of them are less than

a full day; but, you know, does it make sense in light of what's going on with the other cases, does it make sense in light of the fact she might participate in the program, does it make sense in trying to conserve resources for the fund, why not conserve resources for the fund, for the estate, if possible. Right?

Have these conversations. Think about it. Talk to your clients. Talk to each other. Take a look at the whole picture. Stop squabbling. Stop finger pointing. Stop racking up legal fees, writing me letters that have a paragraph here, a paragraph there that's just accusatory in tone; I don't need that, you don't need that. Just see what you can do that makes the most sense. And if you have thoughts, you know, come back and tell me those thoughts.

Right now you've got all these depositions happening. I think it was by the end of July -- is that right?

MR. MOSKOWITZ: Correct, your Honor. That was July 27th.

THE COURT: Well, by all means, if this is the best schedule and this schedule makes sense, so just go do it. But I'll give you until August 14, which is a couple of weeks into August, if you want a little breathing room and you can work together well with that in mind. It

doesn't mean just put things off for the sake of putting it off. It doesn't mean, you know, be lax with respect to the case; it just means be sensible in terms of planning and thinking about what you're doing instead of reflexive on both sides. Okay?

MS. KAPLAN: Understood, your Honor. And, again, just so it's clear, these are not decisions that we take lightly. Without waiver of any privilege, we have talked very carefully with our client about all these issues. This is her decision to go forward with this case. And, again, I believe she's entitled to do that under the law.

THE COURT: She's entitled to do it, but there are competing considerations. I mean, you mentioned before a constitutional right. You know, nobody is trying to deprive anybody of any rights that they have here. I mean, we're here, she's entitled to bring a claim. You know, we'll hear her claim. But the Court also is charged with managing its own docket; and, as I said, under the very first Rule of Civil Procedure, which I don't have memorized but should -- I'm going to look it up because I'm particularly fond of Rule 1. Rule 1, Scope and Purpose of the Rules. Let me see if I can get that to open up for me somewhere here. Rule 1: "These rules govern the procedure in all civil actions and proceedings in the United States

District Court," except as stated in Rule 81. "They should be construed, administered and employed by the Court and the parties to secure the just, speedy and inexpensive determination of every action and proceeding." So we have these conflicting issues here. Speedy, that's plaintiff, "Let's go. Let's go." Inexpensive, that's, "Do we have to spend this money? Might the case be resolved separately? Does it make sense when we're talking about an estate where we would like to see the most available money possible for victims of Mr. Epstein?" Those are competing considerations. Might others be coming back to the court? Are they all going to resolve the case? I don't know. You know, is there any way in which it makes sense to coordinate; maybe it does not. But these are things to think about. Nobody is intending to violate anybody's rights here through a just resolution of --

MS. KAPLAN: No. And the first part of that rule that your Honor didn't repeat is justice and just, and that's what my client is seeking here.

THE COURT: Just, speedy and inexpensive, those are the three concerns. We're going to keep them all, all three, in mind as we construe the rules. You know, speedy is going to be difficult because of COVID, whatever we do. That's out of our control. Just, nobody's going to say

that she can't have a fair trial and a just determination. Inexpensive is largely dependent upon how we look at the scope of discovery and how the parties conduct themselves. Keep it in mind and try to keep the cost down and try to work together without squabbling. Okay?

MS. KAPLAN: Thank you, your Honor.

THE COURT: Is there anything outstanding or is there anything that lacks clarity where before we get off this call you want me to cover it or you want me to make something clear for the record? Or you think we're good?

MR. MOSKOWITZ: Your Honor, Bennet Moskowitz. I do have one question. Given what your Honor said about the depositions going into August, is the Court going to formally reset the deadlines that flow from that, you know, expert disclosure --

THE COURT: I'm going to -- yes, I'm going to -- I mean, if you have through the end of July, I'm just going to kick you out another couple of weeks just to give you a little breathing room on the depositions. I expect you to work together on them. I expect you'll be able to work that out. If the dates you've already agreed to work, then they work. If there's something there that doesn't quite work and there's a good reason for it, then, you know, kick it a little bit. And keep talking; and if plaintiff

decides to participate in this process, I may rethink the extent to which things are going forward. I may rethink whether everything should be stayed in whole or in part for at least a short period of time. I don't know. But right now she's not participating, and right now it looks like the discovery is very plaintiff specific; and so under those circumstances, right now I'm not staying anything. Okay?

MS. KAPLAN: Just as a reminder, your Honor, again, a bargain for very clear term in the settlement fund is that no plaintiff should be required to stay anything in order to participate in the fund.

THE COURT: I understand that. But that doesn't bind the Court in what it thinks is sensible. So I understand that, and I'm not at the moment --

MS. KAPLAN: No, it actually -- it may impact my client -- if you're telling me that you're going to stay if she participates in the fund, that actually may impact her decision to participate in the fund.

THE COURT: I'm saying I don't know what I will do. What I'm saying is if she decides to do it -- and I don't know at what point you'll be in discovery at that point; I don't know what will be left -- if the only thing that's left, for example, is defendants' retaining an

expert and examining the plaintiff, she might say, "Yeah, I actually would like to hold off on having to sit for a psychiatric exam by defendants' expert. I don't mind having that held off." Okay?

MS. KAPLAN: Understood, your Honor. I just -- I need to tackle whether if what I'm hearing is --

THE COURT: I'm not -- I'm not making -- I'm not making any advance ruling. What I'm saying is keep me apprised, tell me what you both think is sensible. Hopefully you got from this call that I'm listening to both of you and I'm trying to do what makes sense for the case and what makes sense potentially for other cases. Had I heard that there were depositions where it would be likely that other plaintiffs, should they end up not settling, would want to be at the table for the same witness, I would have said let's stay that particular deposition. I didn't hear that, so I'm not doing it. Okay?

So right now I don't see a basis for a stay, but I do see a reason for you to keep talking and keep communicating and to try to keep thinking about what's sensible. And depending upon where we are, if she decides to participate, there may be two different applications that come in that I may have to weigh. And, like I said, if the only thing that's left is the expensive expert and

she's not raring to go with it, it may make sense to hold it off, you may stipulate to it. It may --

MS. KAPLAN: You're right -- you're right, your Honor. The reason I'm raising it is because if I have to tell her that participating in the fund means this case will be stayed, I think that will affect her decision to --

THE COURT: I am not saying that. I am not saying that. I am saying that if circumstances change and anyone has an application to make, bring it to my attention, and I will hear what everyone has to say, and I will do what I think makes the most sense at that time in those circumstances without prejudging it. I'm not ruling out a potential stay or a partial one. And I am not saying I would do it, either. I'm just saying if things change, tell me what's going on and let me look at it anew with everybody's input. And I will have another conference, and I will hear from everybody. I can't assure her that she will do both simultaneously and this will go absolutely full speed ahead, but I'm not saying right now that I see a basis for a stay. Okay?

MS. KAPLAN: Thank you, your Honor.

THE COURT: All right? No guarantees on the future. We'll take it as it comes.

All right, enough said. I'll probably do a text

order or two on what's outstanding on the docket. And if more issues come up, you know, bring them to my attention. All right?

MS. KAPLAN: Thank you, your Honor.

THE COURT: Thank you, both. Thank you, all.

MS. KAPLAN: Good afternoon.

MR. MOSKOWITZ: Thank you, your Honor.

(Whereupon, the matter is recessed.)

C E R T I F I C A T E

I, Carole Ludwig, certify that the foregoing transcript of proceedings in the case of Doe v. Indyke et al, Docket #19-cv-08673-KPF-DCF, was prepared using digital transcription software and is a true and accurate record of the proceedings.

Signature Carole Ludwig

Carole Ludwig

Date: June 29, 2020