

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

JANE DOE NO. 2, **CASE NO.: 08-cv-80119-MARRA/JOHNSON**

Plaintiff,

vs.

JEFFREY EPSTEIN

Defendant.

_____ /

JANE DOE NO. 3, **CASE NO.: 08-CV-80232-MARRA/JOHNSON**

Plaintiff,

vs.

JEFFREY EPSTEIN

Defendant.

_____ /

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

JANE DOE NO. 4,

Plaintiff,

vs.

JEFFREY EPSTEIN

Defendant.

_____ /

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

JANE DOE NO. 5,
Plaintiff,
JEFFREY EPSTEIN,
Defendant.

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

JANE DOE NO. 6,
Plaintiff,
JEFFREY EPSTEIN,
Defendant.

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

JANE DOE NO. 7,
Plaintiff,
JEFFREY EPSTEIN
Defendant.

C.M.A.,

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

Plaintiff,
JEFFREY EPSTEIN
Defendant.

JANE DOE, CASE NO.: 08-80893-CIV-MARRA/JOHNSON

Plaintiff,

JEFFREY EPSTEIN et al,

Defendants.

_____ /

DOE II, CASE NO.: 09-80469-CIV-MARRA-JOHNSON

Plaintiff,

JEFFREY EPSTEIN et al,

Defendants.

_____ /

JANE DOE NO. 101, CASE NO.: 09-80591-CIV-MARRA-JOHNSON

Plaintiff,

JEFFREY EPSTEIN

Defendant.

_____ /

JANE DOE NO. 102, CASE NO.: 09-80656-CIV-MARRA/JOHNSON

Plaintiff,

JEFFREY EPSTEIN,

Defendant.

_____ /

**Response To Plaintiffs', Jane Does 2-7, Motion for Protective Order (DE 223), With
Incorporated Memorandum Of Law**

Defendant, JEFFREY EPSTEIN ("Epstein" or "Defendant"), by and through his undersigned attorneys, hereby files his Response In Opposition to Plaintiffs', Jane Does

2-7, Motion for Protective Order (DE 223), With Incorporated Memorandum Of Law (the “Motion for Protective Order”). In support, Mr. Epstein states as follows:

I. Introduction & Argument

1. Plaintiffs’ have joined in a collective effort to prevent discovery relating to their medical, psychological, criminal and employment histories, as well as their general backgrounds. Thus, Plaintiffs have unreasonably delayed discovery directed to them. Now, Plaintiffs go even further and request that this court preclude Epstein from investigating these matters through one of the most traditional methods available in the justice system, private investigators. Importantly, Plaintiffs’ allegations do not state that Epstein’s investigators have contacted them directly or indirectly – because they have not. Instead, Plaintiffs allege that Epstein’s private investigators have contacted third parties, that is, Plaintiffs’ “ex-boyfriends, former employers, and others who know nothing of the underlying facts of the case.” The law does not forbid such an investigation.

2. Plaintiff, Jane Doe 7, filed a self-serving hearsay declaration (DE 251-2) wherein she claims she spoke to only one of the individuals apparently interviewed by Epstein’s investigators; however, Plaintiff does not state that the investigators have identified Jane Doe 7 as a Plaintiff in this lawsuit. Defendant expects that in light of this court’s recent order (DE 253) that Plaintiff will speciously amend her declaration. Nonetheless, Plaintiff cannot expect this court to limit Defendant’s investigation efforts when Plaintiff, Jane Doe 7, has stated that investigators have NOT identified her as a Plaintiff in this lawsuit. (Declaration, DE 251-2, ¶5). Moreover, Haley Robson’s affidavit tells a different story; that is, Jane Doe 7 approached her at a local bar and

discussed Jeffrey Epstein with her in a public forum, i.e., Jane Doe 7 discussed her lawsuit with Haley Robson in public, with others. See Exhibit "A". Even so, an elementary review of the alleged questioning by the investigators as set forth in Jane Doe 7's declaration shows that same is relevant (*e.g.*, what was her reputation, did she date older rich guys, did she give massages for money etc...). Surely, Jane Doe 7 is not being heard to argue that her providing massages to "older-rich guys" is not relevant to this action.

3. Despite this court requiring that we proceed with discovery, Plaintiffs continue to make allegations in which they believe this court will allow them to dictate: (a) what is and what is not relevant to the defense of Epstein's case; (b) who has knowledge of the underlying facts of the case for investigation purposes; and (c) what is and what is not discoverable. Under this scenario, Epstein might as well terminate his attorneys and allow the Plaintiffs' attorneys to represent him.

4. Epstein has been faced with several motions seeking to prevent or limit discovery with the primary goal being to send Epstein to trial without little or no discovery. Plaintiffs continue to avert discovery, and now they wish to shelter their pasts by requesting that this court enter an order broadly limiting the rules of discovery and thus preventing Epstein from investigating this matter and the claims Plaintiffs have alleged against him. This would undoubtedly result in reversible error.

5. As set forth in Epstein's Reply to Jane Doe 2-7 Response in Opposition to Epstein's Motion to Identify (the "Reply")(DE 247), Plaintiffs' have several preexisting and diagnosed conditions for which they now attempt to pawn off on Epstein in an effort to increase their damages. For instance, prior to any of their alleged encounters with

Epstein, certain Plaintiffs have been raped, sexually abused, molested and physically and verbally abused. Some of them have been diagnosed with post traumatic stress disorder or obsessive compulsive disorder, and some have suicidal thoughts and/or have attempted suicide on more than one occasion. Moreover, some of the Plaintiffs have witnessed close friends or family members commit suicide. While the above incidents are nothing less than tragic, the impact of those incidents on each of the Plaintiffs must be taken into consideration with the claims they make and the damages they seek against from Epstein. Plaintiffs have objected to all meaningful discovery, and now they seek to halt all traditional investigatory methods which may lead to evidence that may diminish or disprove their claims and/or evidence that may prove that Plaintiffs have made inconsistent statements relative to their allegations.

6. As this court is well aware, utilizing investigators prior to and during a lawsuit is a common well-accepted method by which parties seek to obtain information not easily or otherwise obtainable about the claims asserted by them or against them in a lawsuit. Investigators are employed not only by individuals involved in lawsuits but also by insurance companies, small businesses, the State Attorneys' Office, the Public Defenders' Office, and the Federal Government. If this court's precludes Epstein's private investigators from seeking information from third parties about the claims asserted against him by Jane Does 2-7, it will undoubtedly violate Epstein's due process rights by preventing him from defending the allegations made against him and it will further open the floodgates to additional challenges from others who are the subject of an investigation commenced by insurance companies, small businesses, the State Attorneys' Office, the Public Defenders' Office and the Federal Government.

7. Plaintiffs claim in their Motion for Protective Order that retaining investigators in a case such as this one is not “customary.” Such an assertion is not only nonsensical, but Plaintiffs also fail to cite one case or rule supporting their overbroad and self-serving theory. In fact, Plaintiffs’ theory would result in rewriting the rules of discovery, and the intended purpose of the rules would largely be disregarded (i.e., to obtain all information necessary to prosecute and/or defend claims such that the element of unfair surprise is diminished).

8. Despite this court ordering that we move these cases forward, Plaintiffs’ strategy is to delay or prevent the very discovery this court said Defendant should undertake! Once again, this court has already ruled that Plaintiffs can only be deposed once (Case #80119, DE 98 at ¶5 – “Defendant is limited to a single deposition of each Plaintiff, during which defendant may depose the Plaintiff as both a party and a witness.”). Plaintiffs, however, refused for several months to allow third-party subpoenas to be served to obtain among other things, medical, psychological, criminal and employment histories. The court recently entered an order allowing for Defendant to serve the third-party subpoenas. Even so, Plaintiffs now wish to halt any outside investigation of the claims they have asserted against Epstein. It appears Plaintiffs wish for this court to force Epstein to take their depositions without any relevant information in hand, and with the ultimate goal of sending Epstein to trial without any legitimate information and discovery that will reduce Plaintiffs’ damages or contradict their claims.

9. Plaintiffs universally agreed at the June 12, 2009 hearing on Defendant’s Motion to Stay that regular discovery could proceed. See Composite Exhibit “B” at pages 26-30 & 33-34. For instance, the court asked Plaintiffs’ attorneys the following

questions:

The Court: [] So again, I just want to make sure that if the cases go forward and if Mr. Epstein defends the case as someone ordinarily would defend a case being prosecuted against him or her, that that in and of itself is not going to cause him to be subject to criminal prosecution? (Ex. "A," p.26).

The Court: You agree he should be able to take the ordinary steps that a defendant in a civil action can take and not be concerned about having to be prosecuted? (Ex. "A," p.27).

The Court: Okay. But again, you're in agreement with everyone else so far that's spoken on behalf of a plaintiff that defending the case in the normal course of conducting discovery and filing motions would not be a breach? (Ex. "A," p.30).

Mr. Horowitz – counsel for Jane Does 2-7: Subject to your rulings, of course, yes. (Ex. "A," p.30).

The Court: But you're not taking the position that other than possibly doing something in litigation which is any other discovery, motion practice, *investigations* that someone would ordinarily do in the course of defending a civil case would constitute a violation of the agreement? (Ex. "A," p.34).

Ms. Villafana: No, your honor. I mean, civil litigation is civil litigation, and being able to take discovery is part of what civil litigation is all about.... But. . . , Mr. Epstein is entitled to take the deposition of a Plaintiff and to subpoena records, etc. (Ex. "A," p.34)

10. It is clear from the transcript attached as Exhibit "B" that each of the Plaintiffs' attorneys, including Mr. Horowitz for Jane Does 2-7, expected and conceded that regular/traditional discovery would take place (i.e., discovery, motion practice, depositions, requests for records, and *investigations*).

11. Investigating any claims made against any Defendant is reasonable and should not be limited. For instance, assume an investigator contacts a third-party who

knew or dated one of the Jane Does before and/or after the Plaintiffs' alleged encounters with Epstein. Is it Plaintiffs' contention that an investigator cannot ask the ex-boyfriend or the friend: (a) whether Plaintiff ever mentioned Epstein; (b) whether Plaintiff gave Epstein massages; (c) whether Plaintiff ever complained about her alleged experiences with Epstein; and/or (d) whether Plaintiff ever seemed disturbed or traumatized about her alleged experiences with Epstein. If this court grants Plaintiffs' request, it will result in Plaintiffs being afforded the opportunity to make sexual assault and battery allegations without affording Epstein the opportunity to defend those specific allegations. This is not the same as identifying each Jane Doe by name in a public proceeding accessible by all – it is basic behind the scenes discovery which seeks to investigate and question others on an individual basis. Plaintiffs' request, if granted, would violate Epstein's constitutional and due process rights to defend himself, and would further not allow Epstein a full opportunity to confront the Plaintiffs that have made allegations against him with the necessary material to properly cross-examine them at trial. As such, this would violate Epstein's 6th Amendment Right to confront witnesses, and the due process clauses of the Fifth and Fourteenth Amendments.

12. It is simply not fair to allow the Plaintiffs to file lawsuits containing sexual-abuse allegations and then attempt to use the rules of discovery and those same sexual-abuse allegations as a sword to cut-out the heart of Defendant's case (and the defenses thereto) while simultaneously brandishing their allegations as a shield from disclosure of any Achilles heel.

II. Memorandum of Law

a. The Allegations in the Amended Complaints As to Jane Does 2-7

13. The amended complaints filed by Jane Does 2-7 against Jeffrey Epstein make allegations of sexual assault and abuse upon a minor and seek damages in excess of \$50 million. Jane Does 2-7 allege confusion, shame, humiliation, embarrassment, and severe psychological and emotional injuries. It is further alleged that they suffered, and will continue to suffer, severe and permanent traumatic injuries, including mental, psychological, and emotional damages. Plaintiffs allege intentional infliction of emotional distress, severe emotional distress, severe mental anguish and pain. They further allege that they suffered personal injury including mental, psychological and emotional damage.

14. It is the Defendant's job to obtain information to disprove and/or find information that diminishes Plaintiffs' damage claims. The rules of discovery contemplate same.

b. The Rules of Discovery Contemplate the Hiring of Investigators

15. The rules of discovery contemplate the hiring of investigators, and also protect the information obtained by an investigator as the work-product of the hiring attorney because the materials are obtained or created in anticipation of litigation or for trial. See Alachua General Hospital, Inc. v. Zimmer USA, Inc., 403 So.2d 1087 (Fla. 1st DCA 1981); Fed.R. Civ.Pro. 26(b)(3)(B); Fla.R.Civ.Pro. 1.280; In re Faro Technologies Securities Litigation, 2008 WL 205318 (M.D. Fla. 2008); Lake Shore Radiator, Inc. v. Radiator Express Warehouse, 2008 WL 842989 (M.D. Fla. 2007)(protecting investigative materials as work-product); and Hickman v. Taylor, 329 U.S. 495, 508, 67 S.Ct. 385, 91 L.Ed. 451 (1947)(noting, among other things and subject to exception, that work-product includes information which an attorney secures from a witness while acting for his client

in anticipation of litigation or for trial). Florida even has its own investigative privilege codified in Fla. Stat. §493.6119, which also seeks to promote the rules of discovery and protect any investigators file. Accordingly, it is clear that the overall purpose of discovery under the Federal Rules is to obtain a full and accurate understanding of the true facts in order to obtain a fair and just result. United States v. Proctor & Gamble Co., 356 U.S. 677, 682, 78 S.Ct. 983 (1958).

16. Defendant should not have to rely on only those “handpicked” witnesses disclosed by Plaintiff at depositions, through interrogatories or by way of Rule 26 disclosures who Plaintiffs and their lawyers have identified to:

- (a) test the Plaintiffs’ credibility as to their alleged involvement with Epstein;
- (b) determine the alleged effects on Plaintiffs as a result of any involvement with Epstein;
- (c) identify other females whom Plaintiffs took or might have met at Epstein’s home;
- (d) support Plaintiffs’ claims that she sustained damages as a result of their alleged involvement with Epstein; and
- (e) determine what Plaintiffs may have said to others regarding the alleged incidents.

17. Many of the Plaintiffs are claiming that Epstein is the sole or substantial contributing cause of their physical, psychological and emotional damages. However, as this court is aware, Plaintiffs have experienced several incidents in their lives which affected them emotionally and psychologically. See e.g., Exhibits “C” and “D”, Affidavits of Richard C.W. Hall, outlining the psychological issues experienced by Jane Does 4 and 6 as a result of incidents in their lives prior to Epstein, which cannot be discounted. For additional affidavits of the remaining Jane Does, see DE 247 and the

Affidavits attached thereto. As such, Plaintiffs should not be able to “handpick” who Defendant utilizes to refute their allegations.

18. Accordingly, Plaintiffs cannot expect this court to limit Epstein’s investigation of the claims they assert against him. To hold otherwise will negatively effect information sought by way of depositions, independent medical evaluations, regular discovery and the like, thereby prejudicing Epstein and impacting the one day he will have in court to defend these allegations.

III. Conclusion and Requested Relief

19. It is critical for this entire case that Epstein be able to conduct regular discovery, which includes investigating the claims Plaintiffs make against him by using an investigator. As Dr. Hall stated in his affidavits attached to DE 247, “there are a number of variables that combine to determine the effects of such alleged victimization, including the type and character of the alleged assault, and key victim variables such as demographics, psychological reactions at the time of the trauma, previous psychiatric or psychological history, previous victimization history . . . , general personality dynamics and coping style, as well as sociocultural factors such as drug use/abuse; poverty; social inequity and/or inadequate social support; any previous history of abuse within or outside the family; whether individuals were abused by strangers, acquaintances or family members; and whether there was any history of indiscriminate behavior that may have placed them at increased risk. . . .” Id. It is also important to know about Plaintiffs’ “. . . previous sexual conduct, contact with police or welfare agencies, alcohol or drug use/abuse, voluntary sexual activity, contraceptive use, genital infections, or apparent indifference to previous abuse. . . whether any significant psychiatric illnesses were

present, whether they were taking any medications (prescribed or non-prescribed), whether there had been previous suicide attempts, thoughts, plans, etc. . . . , and whether . . . Plaintiffs' relationships with their families and familial factors, including social disadvantage, family instability, impaired parent/child relationship, and parental adjustment difficulties [were present]" Id. It is therefore critical for Epstein to conduct a thorough investigation, which will confirm or rebut Plaintiffs' allegations in their respective complaints. To hold otherwise would cause this court to accept Plaintiffs' allegations as true without allowing Epstein to retain information to refute same.

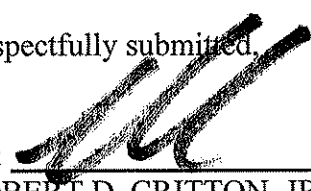
Wherefore, Epstein requests that this court deny Plaintiffs' Motion for Protective Order, and for such other and further relief as this court deems just and proper.

By: 
MICHAEL J. PIKE, ESQ.
Florida Bar #617296

Certificate of Service

I HEREBY CERTIFY that a true copy of the foregoing was electronically filed with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record identified on the following Service List in the manner specified by CM/ECF on this 11 day of aug, 2009

Respectfully submitted,

By: 
ROBERT D. CRITTON, JR., ESQ.
Florida Bar No. 224162
rcrit@bclclaw.com
MICHAEL J. PIKE, ESQ.
Florida Bar #617296
mpike@bclclaw.com
BURMAN, CRITTON, LUTTIER &
COLEMAN
515 N. Flagler Drive, Suite 400
West Palm Beach, FL 33401

561/842-2820 Phone
561/515-3148 Fax
(*Counsel for Defendant Jeffrey Epstein*)

Certificate of Service
Jane Doe No. 2 v. Jeffrey Epstein
Case No. 08-CV-80119-MARRA/JOHNSON

Stuart S. Mermelstein, Esq.
Adam D. Horowitz, Esq.
Mermelstein & Horowitz, P.A.
18205 Biscayne Boulevard
Suite 2218
Miami, FL 33160
305-931-2200
Fax: 305-931-0877
ssm@sexabuseattorney.com
ahorowitz@sexabuseattorney.com
Counsel for Plaintiffs
In related Cases Nos. 08-80069, 08-80119,
08-80232, 08-80380, 08-80381, 08-80993,
08-80994

Richard Horace Willits, Esq.
Richard H. Willits, P.A.
2290 10th Avenue North
Suite 404
Lake Worth, FL 33461
561-582-7600
Fax: 561-588-8819
Counsel for Plaintiff in Related Case No.
08-80811
reelrhw@hotmail.com

Jack Scarola, Esq.
Jack P. Hill, Esq.
Searcy Denney Scarola Barnhart & Shipley,
P.A.
2139 Palm Beach Lakes Boulevard
West Palm Beach, FL 33409
561-686-6300
Fax: 561-383-9424
jsx@searcylaw.com

Brad Edwards, Esq.
Rothstein Rosenfeldt Adler
401 East Las Olas Boulevard
Suite 1650
Fort Lauderdale, FL 33301
Phone: 954-522-3456
Fax: 954-527-8663
bedwards@rra-law.com
Counsel for Plaintiff in Related Case No.
08-80893

Paul G. Cassell, Esq.
Pro Hac Vice
332 South 1400 E, Room 101
Salt Lake City, UT 84112
801-585-5202
801-585-6833 Fax
cassellp@law.utah.edu
Co-counsel for Plaintiff Jane Doe

Isidro M. Garcia, Esq.
Garcia Law Firm, P.A.
224 Datura Street, Suite 900
West Palm Beach, FL 33401
561-832-7732
561-832-7137 F
isidrogarcia@bellsouth.net
Counsel for Plaintiff in Related Case No.
08-80469

Robert C. Josefsberg, Esq.
Katherine W. Ezell, Esq.
Podhurst Orseck, P.A.
25 West Flagler Street, Suite 800
Miami, FL 33130

jph@searcylaw.com
Counsel for Plaintiff, C.M.A.

Bruce Reinhart, Esq.
Bruce E. Reinhart, P.A.
250 S. Australian Avenue
Suite 1400
West Palm Beach, FL 33401
561-202-6360
Fax: 561-828-0983
ecf@brucereinhardt.com
Counsel for Defendant Sarah Kellen

Theodore J. Leopold, Esq.
Spencer T. Kuvin, Esq.
Leopold-Kuvin, P.A.
2925 PGA Blvd., Suite 200
Palm Beach Gardens, FL 33410
561-684-6500
Fax: 561-515-2610
*Counsel for Plaintiff in Related Case No.
08-08804*
skuvin@riccilaw.com
tleopold@riccilaw.com

305 358-2800
Fax: 305 358-2382
rjosefsberg@podhurst.com
kezell@podhurst.com
*Counsel for Plaintiffs in Related Cases
Nos. 09-80591 and 09-80656*

Jack Alan Goldberger, Esq.
Atterbury Goldberger & Weiss, P.A.
250 Australian Avenue South
Suite 1400
West Palm Beach, FL 33401-5012
561-659-8300
Fax: 561-835-8691
jagesq@bellsouth.net
Counsel for Defendant Jeffrey Epstein