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June 11, 2020

VIA ECF

Hon. Judge Freeman
Daniel Patrick Moynihan
United States Courthouse
500 Pearl St.
New York, NY 10007

Re: Doe v. Indyke et al., No. 19-cv-8673-KPF (S.D.N.Y.)

Dear Judge Freeman:

We write in response to Defendants' Letter of June 9, 2020 ("Defendants' Letter") requesting a 30-day extension of all remaining deadlines in the above-referenced action (Doc. No. 70).

Defendants' Letter blatantly mischaracterizes both the status of discovery in this matter and the discussions between the parties leading to the instant dispute. In fact, Defendants waited until June 8, 2020 (the "June 8 Email"), five weeks before the end of fact discovery, to inform Plaintiff that they plan to take nine previously-undisclosed non-party depositions and to demand that Plaintiff vastly expand her review of ESI by running 16 new search terms—and then informed Plaintiff that a blanket 30-day extension of all remaining case deadlines is necessary to allow the parties to complete this remaining work.[1] There is no cause for the extension Defendants now request, aside from their own egregious and deliberate delay. Accordingly, Plaintiff refused to consent to Defendants' blanket request. Plaintiff did, however, offer to discuss any specific scheduling issues with Defendants, including by scheduling a deposition outside of the fact discovery deadline if necessary, an offer to which Defendants did not even respond before seeking this Court's intervention.

Background. As the Court is aware, discovery in this case commenced on January 20, 2020. (Doc. No. 16). In March, the parties exchanged initial interrogatories and requests for production of documents. Plaintiff also attempted to initiate discussions regarding ESI discovery,

[1] Plaintiff has not attached the June 8 Email or subsequent correspondence as an exhibit in deference to the privacy interests of certain potential fact witnesses whose names are reflected in the emails. However, Plaintiff will certainly provide the June 8 Email to the Court if it would assist the Court in rendering a decision.

proposing an ESI and Privilege Protocol on March 25, which Defendants deemed premature. On April 8, 2020, Defendants requested a 30-day extension of all discovery deadlines due to the COVID-19 pandemic. Plaintiff initially objected to this request for a generalized extension of all deadlines, unmoored from any specific exigency, but, in the spirit of cooperation, ultimately consented to Defendants' request. (Doc. No. 59.)

On April 16, 2020, the parties exchanged their responses and objections to their respective interrogatories and document requests. Plaintiff's responses disclosed, among other information, the names of the persons and entities whom Defendants now, for the first time, seek to depose. Defendants, however, refused to meaningfully answer a *single* interrogatory, including, for example, Plaintiff's straightforward request that Defendants identify Decedent Jeffrey Epstein's email addresses. Eventually, on May 21, 2020, Defendants provided supplemental responses to Plaintiff's interrogatories, which rectified this indefensible omission (and others).

Throughout April and May, the parties conferred frequently by phone and in writing on a range of discovery issues, including the timeline for document production and matters related to ESI, and reached, among other productive developments, a mutual agreement to exchange proposed search terms. On May 19, 2020, Plaintiff provided Defendants with the search terms she intended to run against her ESI, and invited Defendants to propose any additional search terms, which they did not do. For her part, Plaintiff provided Defendants on May 29, 2020 with a narrow set of four additional search terms—all of which, it bears noting, were simply different iterations of terms Defendants had already used—to run against their ESI. In addition, Plaintiff made productions of documents on May 15 and May 30, 2020, and informed Defendants, repeatedly, that she was nearing substantial completion of her document productions. On June 5, 2020, Defendants made a small initial production of documents.

During this time, the parties also discussed scheduling Defendants' deposition and Rule 35 examination of Plaintiff. *Not once during any of these discussions* did Defendants suggest that the timeline for document production or the scheduling of Plaintiff's deposition and examination would need to be adjusted to account for the nine non-party depositions that they now propose. Indeed, on June 1, 2020, the parties submitted a joint report to this Court noting, among other things, that Plaintiff expected to complete her document production imminently. (Doc. No. 68.) Again, Defendants made no mention of their planned depositions or need for additional ESI discovery from Plaintiff.

Extension Request. On June 8, 2020, Defendants responded to Plaintiff's proposed dates for her deposition and Rule 35 exam by informing her, for the first time, that they intend to depose nine non-party individuals and entities and that they cannot depose Plaintiff prior to those other depositions. Defendants also requested, again for the first time, that Plaintiff run 16 entirely new search terms against her ESI. Defendants informed Plaintiff that, in order to accommodate the foregoing, they wished to schedule Plaintiff's deposition "during the second half of July," and to extend all remaining case deadlines by 30 days. In their email, Defendants also claimed that the remaining discovery disputes between the parties and the fact that New York City is in "Phase 1" of re-opening from the COVID-19 lockdown further support their extension request.

None of Defendants' purported reasons justify a discovery extension. *First*, although the COVID-19 pandemic presents a novel and challenging situation for all involved, Defendants have not identified a single specific challenge that New York City's reopening status poses to progress

on the remaining discovery in this case. *Second*, there is no reason that the remaining discovery disputes between the parties necessitate a blanket 30-day extension of all case deadlines at this time. After weeks of discussion, the parties have resolved all but two disputed topics: (1) Defendants' demand for Plaintiff's complete physical medical history and associated records, regardless of whether those records relate in any way to the claims and defenses in this action, and (2) Defendants' demands for privileged materials in the custody of Plaintiff's counsel. While it is regrettable that the parties are apparently at an impasse on these issues, there is no reason to believe that this Court will be unable to resolve these disputes before the end of fact discovery, should Defendants in fact decide to burden this Court with these demands. (Doc. No. 70 at 2.)

Third, Defendants' late-rising decision that nine more depositions and additional ESI discovery is necessary does not entitle them to yet another extension. There is absolutely no justification for Defendants' decision to wait until now to disclose their intention to conduct this battery of depositions, especially when the identities of the deponents were disclosed to them eight weeks ago (and, with respect to one proposed deponent, almost 18 weeks ago). Defendants' problem is wholly of their own making: if five weeks is not enough time, Defendants should not have waited until five weeks remained in fact discovery to announce their intention to conduct these depositions. *See Wega v. Ctr. for Disability Rights Inc.*, 395 F. App'x 782, 786 (2d Cir. 2010) (Party who "neglected to exercise due diligence in locating the witness prior to the discovery deadline" could "not demonstrate 'good cause' for an extension").

Indeed, Defendants offer no actual justification for this delay. Instead, Defendants' Letter argues that Plaintiff's objections to their timing are misplaced because Plaintiff noticed two non-party depositions only two days earlier. But Plaintiff has every expectation that the two depositions she noticed can easily be completed *within the time remaining for fact discovery*. Indeed, as Plaintiff has informed this Court and Defendants repeatedly, she expects that these witnesses will invoke their Fifth Amendment right against self-incrimination and decline to meaningfully answer nearly all questions. *See, e.g.,* Dec. 11, 2019 Hr'g Tr. at 12:24-13:4; Feb. 11, 2020 Hr'g Tr. 31:1-9.

Defendants also point to the fact that "neither side is finished searching for and producing documents" in an attempt to justify their extension request. Defendants' Letter at 2. This assertion omits important context: as Defendants are well aware, Plaintiff is very close to substantially completing her document production, and has already produced, among other things, the medical records that she voluntarily collected from the medical providers Defendants now seek to depose in an effort to streamline discovery.[2] Regardless, there is no merit to the Defendants' suggestion that they were somehow precluded from providing *notice* of their depositions until document production was complete. Indeed, had Defendants provided timely notice of these depositions and endeavored to schedule them in an appropriate manner, Plaintiff could have prioritized her review and production of documents to ensure that documents relevant to specific depositions were produced at the necessary time. This is entirely standard practice in civil litigation, as Defendants are no doubt fully aware.

[2] Defendants' suggestion that "both sides proposed numerous additional ESI search terms" on June 8 likewise misrepresents the course of events by omitting context. Defendants' Letter at 2. On June 8, *Defendants* proposed 16 additional ESI search terms for the first time. Plaintiff simply requested that Defendants reciprocally run a small subset of those search terms in response to Defendants' unexpected disclosure of their intention to conduct nine nonparty depositions.

Plaintiff remains willing to confer about any of Defendants' specific scheduling needs, including those involved in scheduling the nine depositions Defendants now propose. She will also expedite any necessary and appropriate additional ESI review in order to ensure that Defendants' request does not lead to further delay. But a 30-day extension of every applicable deadline in this case is simply not warranted at this time. Defendants' need for such an extension arises only from their own continued efforts to stall discovery in this case, and they should not be rewarded for this obstructionist conduct with additional time. *See Schine v. Crown*, No. 89 Civ. 3421, 1992 WL 162820, at *1 (S.D.N.Y. June 22, 1992) (denying motion for extension in part because "moving papers do not demonstrate any legally sufficient reason why the discovery proposed to be taken could not have been completed" prior to the deadline and noting that "Plaintiffs failure vigorously to prosecute this action is their own fault, and they must bear the consequences"). Further delay is particularly prejudicial to Plaintiff, who has been seeking some modicum of justice for her abuse at Epstein's hands for years, and whose efforts in this litigation have been consistently hindered by Defendants' dilatory tactics.

Respectfully submitted,

s/ Kate L. Doniger

Kate L. Doniger

cc: Judge Failla
Counsel of Record