

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

JANE DOE NO.2,

Plaintiff,

CASE NO.; 08-CV-80119-MARRA/JOHNSON

vs.

JEFFREY EPSTEIN,

Defendant.

JANE DOE NO.3,

CASE NO.; 08-CV-80232-MARRA/JOHNSON

Plaintiff,

vs.

JEFFREY EPSTEIN,

Defendant.

JANE DOE NO.4,

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

Plaintiff,

vs.

JEFFREY EPSTEIN,

Defendant.

JANE DOE NO. 5,

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

Plaintiff,

vs.

JEFFREY EPSTEIN,

Defendant.

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JANE DOE NO. 6,

Plaintiff,

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

vs.

JEFFREY EPSTEIN,

Defendant.

JANE DOE NO. 7,

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

Plaintiff,

vs.

JEFFREY EPSTEIN,

Defendant.

C.M.A.,

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

Plaintiff,

vs.

JEFFREY EPSTEIN,

Defendant.

JANE DOE,

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

Plaintiff,

vs.

JEFFREY EPSTEIN, et al.,

Defendants.

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DOE II,

Plaintiff,

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

vs.

JEFFREY EPSTEIN, et al,

Defendants.

JANE DOE NO. 101,

CASE NO.; 08-CV-80591-MARRA/JOHNSON

Plaintiff,

vs.

JEFFREY EPSTEIN,

Defendant.

JANE DOE NO. 102,

CASE NO.; 08-CV-80656-MARRA/JOHNSON

Plaintiff,

vs.

JEFFREY EPSTEIN,

Defendant.

Defendant, Jeffrey Epstein's, Reply to Plaintiff, Carolyn Margaret Andriano's, Opposition to Epstein's Motion To Strike Cases From Current Trial Docket And Motion to Continue Case And/Or Alternative Motion to Modify Trial and Scheduling Order Deadlines

Defendant, JEFFREY EPSTEIN (hereinafter "EPSTEIN"), by and through his undersigned attorneys, hereby files his Reply to Plaintiff, Carolyn Margaret Andriano's (hereinafter "CMA"), Opposition to Motion To Strike Cases From Current Trial Docket

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And Motion to Continue Case And/Or Alternative Motion to Modify Trial and Scheduling Order Deadlines. In support, EPSTEIN states:

Background

1. C.M.A. was filed on February 23, 2008. The case was removed to federal court on July 21, 2008. A Motion for Stay was filed on July 25, 2008 (DE 33), which this Court subsequently denied on December 12, 2008 (DE 28). The case was transferred from Judge Zloch to this division on September 3, 2008 (DE 21). C.M.A. filed her First Amended Complaint on February 10, 2009. (C.M.A. DE 39-40). Epstein's Motion to Dismiss same was filed on March 12, 2009. (C.M.A. DE 47). The Motion to Dismiss remains outstanding.

2. Pursuant to the court's Order Setting Trial And Discovery Deadlines, Referring Case To Mediator And Referring Discovery Motions To U.S. Magistrate Judge (the "Trial Orders"), this matter is currently set on this court's Trial Docket commencing February 22, 2010. However, the schedules and the trial date must be set back for the reasons set forth in the Motion to Strike and herein.

Argument and Memorandum of Law

3. Defendant never sat on his hands for six months as C.M.A. suggests. During that time period, numerous other cases have been filed against Epstein, all of which required extensive attorney time to address the numerous motions and discovery to and from various plaintiffs.

4. In addition, up until May 20, 2009, Plaintiff refused to allow Defendant to identify her by name in various third-party subpoenas directed to Plaintiff's health care

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providers, past and current; basic personal injury discovery. If defendant could not use CMA's name, how could the provider have provided records from a "CMA" designation? In fact, as set forth in Defendant's April 29, 2009 Motion to Identify (DE 67), Plaintiff offered to allow Defendant access to her medical history only after her attorneys were able to obtain and filter through same. Only then would Plaintiff turnover the "filtered" relevant information. Obviously, such an offer is unrealistic and does not comport with the basic discovery rules or afford Epstein his constitutional due process rights to defend himself. As set forth herein, it is evident that discovery has been unreasonably delayed and now prevented by C.M.A. who seeks over a million dollars in damages.

5. On May 20, 2009, C.M.A. capitulated and filed her Notice of Withdrawal of Previously Raised Objections to Epstein's Motion to Compel and/or Identify C.M.A. in the Style of this Case and Motion to Identify C.M.A. in Third-Party Subpoenas for Purposes of Discovery, or Alternatively, Motion to Dismiss Sue Sponte (DE 23)(the "Notice of Withdrawal"). Defendant's Motion to Identify can be found at docket entry #67 in the individual C.M.A. matter. Obviously, by filing the Notice of Withdrawal, Plaintiff recognized that her attempts to prevent meaningful discovery was delaying this matter and would ultimately delay her trial.

6. Now, after filing the Notice of Withdrawal, C.M.A. states, at paragraph 5 in her Opposition Motion to Defendant's Motion to Strike, that she identified in her responses to interrogatories thirty-six (36) people, other than herself and Epstein, who may have knowledge regarding the subject matter of this lawsuit, including mental health providers, relatives, friends, etc.... C.M.A. cleverly forgets that up until May 20, 2009,

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C.M.A. objected to Defendant obtaining any of her medical information, despite the fact that her medical history and psychological condition are key elements of her damage claims in this matter. Moreover, C.M.A. continues to object to providing information concerning her alleged ability to work or not to work (despite her claim of loss of earnings in the past and capacity in the future), which is currently the subject of a motion to compel. Clearly, Defendant would waste considerable attorney time taking depositions until such time as the appropriate information is produced by Plaintiff, including her tax returns so that her supervisors, friends and colleagues may be identified and deposed. Simply put, substantial and key discovery remains outstanding. Defendant should not be forced to take depositions without the ability to have records and information in hand.

7. C.M.A. failed to disclose that on June 5, 2009 she filed a Motion for Protective Order Regarding Treatment Records From Parent-Child Center, Inc. and Dr. Serge Thys (DE 114), and of even date she filed her Conditional Notice of Intent to Exclusively Rely on the Statutory Damages provided by 18 U.S.C. 2255. (DE 113). On June 17, 2009, Plaintiff filed a subsequent Motion for Protective Order Regarding Treatment Records From Palm Beach County School District, Good Samaritan Hospital, St. Mary's Hospital Dr. Gloria C. Hakkarinen, and Florida Atlantic University (DE 121). While Plaintiff agreed to allow Defendant to identify her in various third-party subpoenas directed to her physicians, she now utilizes another delay tactic to prevent discovery of her past medical and psychological history from being discovered by and through the Conditional Notice and the Motions for Protective Order. What is Plaintiff trying to hide?

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8. After Plaintiff allowed Defendant to use her name in third party subpoenas, Defendant served subpoenas on:
 - a. Palm Beach County School District
 - b. Dr. Serge Thys
 - c. Parent/Child Center
 - d. Good Samaritan Hospital
 - e. St. Mary's Hospital
 - f. Dr. Gloria C. Hakkarinen
 - g. Florida Atlantic University

CMA then filed two (2) protective orders, and all records that were obtained (or were to be obtained) went sent to her attorney, i.e. discovery was halted by CMA not the Defendant.

9. Without the health care provider information, including psychological/psychiatric records, it will be impossible to have a meaningful compulsory psychological examination by a defense expert.

10. Comically, Plaintiff claims in the Conditional Notice and in the Motion for Protective Order that if she is successful at Motion to Dismiss, she intends to rely exclusively on the statutory damages provided under 18 U.S.C. 2255 rather than those damages provided for under common law. On the flipside, Plaintiff then claims that ". . .should the court rule. . .that the statutory damage floor can only be applied once, Plaintiff will be pursuing any and all damages available to her, whether they be pursuant to statute or by common law." (DE 113 at ¶5-6 and DE 114 at ¶4-7). The undersigned

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assumes this is part of the “conditional” aspect of the notice. Based upon the court’s ruling referenced below, such a position is not warranted at Motion to Dismiss stage. What if this motion is not ruled upon until after the discovery cutoff or two weeks before the trial? The Defendant will have been prevented from obtaining critical discovery.

11. Thus, it appears C.M.A. intends to further stall discovery pending the outcome of the Motion to Dismiss and any future Motion for Summary Judgment. See infra. That is, C.M.A. wishes to rely on the statutory damage floor if she is successful at motion to dismiss, and claims her medical history will not be at issue and thus no evidence regarding her physical, emotional and pecuniary injuries will be presented at trial. First, that is not what is currently alleged in the 89-page Amended Complaint. Second, paragraph 6 of Plaintiff’s Motion for Protective Order (DE 114) is cleverly worded in that it states “[p]laintiff will not be presenting any evidence of the extent of her physical, emotional or pecuniary injuries, **beyond** evidence that she was a victim of sexual contact to which she was legally incapable of consenting by virtue of her age (including, pain and suffering, emotional distress, psychological trauma, mental anguish, humiliation, embarrassment, loss of self-esteem, loss of dignity, invasion of her privacy, and loss of the capacity to enjoy life).” This court must ask what Plaintiff intends to use “**beyond**” evidence of the extent of her physical, emotional or pecuniary injuries. Does “**beyond**” mean Plaintiff still intends to produce evidence of her pain and suffering, emotional distress, psychological trauma etc... even if she is successful at Motion to Dismiss?

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12. Next, and equally significant, this court ruled in its May 28, 2009 Order that “[i]ssues regarding the minimum amount of damages available to Plaintiff under 18 U.S.C. 2255 do not affect whether plaintiff has stated a claim and are not appropriate for Motion to dismiss. These damages issues will be resolved at summary judgment or trial.” See Order (DE 101). Hence, if this Court accepts Plaintiff’s position and her bogus Notice of Conditional Reliance, Defendant may not be permitted discovery as to C.M.A.’s damages alleged in the Amended Complaint until a Motion for Summary Judgment is ruled upon, which could be right before and/or at trial. Certainly, such a result would be inherently unfair, but exactly what Plaintiff is strategizing to accomplish. Should this court entertain Plaintiff’s position, maybe it should also entertain a *conditional* stay of this matter until such time as Plaintiff *firmly* decides what route she will traverse to recover damages.

13. Additionally, it is unreasonable for this court to accept Plaintiff’s position set forth in the Conditional Reliance and in the Motion for Protective Order because this court has already ruled that Plaintiff can only be deposed once. As such, Plaintiff cannot force the taking of her deposition while key discovery remains unavailable due to the Plaintiff’s Motions for Protective Order. Moreover, if Defendant prematurely takes Plaintiff’s deposition based on one (1) theory of recovery (which is exactly what Plaintiff is attempting to accomplish), then under this Court’s prior ruling, an additional deposition of Plaintiff may not be allowed despite Plaintiff’s success at Motion to Dismiss or Motion for Summary Judgment in connection with her 18 U.S.C. 2255 claims and/or conditional reliance.

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14. Nonetheless, despite Plaintiff's success at Motion to Dismiss or Motion for Summary Judgment, Defendant has a constitutional due process right to discover and assert defenses to C.M.A.'s claims. However, C.M.A. and her attorneys wish to direct this court, control how discovery will take place and who will be deposed, control what questions will be asked and to whom, and Plaintiff wishes to decide what damages she may seek pending the outcome of a substantive motion despite what her Amended Complaint already alleges. Accordingly, Epstein's due process rights in connection with the defense of this matter are being violated.

15. In sum, the above reflects C.M.A.'s tactics to delay and prevent meaningful discovery in hopes that C.M.A. will be able to prevent Epstein from putting on any evidence in defense of his case. Epstein cannot defend this matter when the element of unfair and prejudicial "surprise" is ever so present. Schearbrook Land and Livestock Company v. U.S. et. al, 124 F.R.D. 221 (M.D. Fla. 1988). Plaintiff's trial by ambush tactics should not be tolerated.

16. Accordingly, this court should exercise its discretion and modify the trial order and the deadlines/schedules thereunder as requested in Defendant's initial Motion to Strike and Continue Case. Under the circumstances outlined above, failure to strike this case from the current docket, continue the trial, and/or to modify the court's scheduling order will prejudice Epstein. Fed.R.Civ.Pro. 16(b)(4); Altadis USA, Inc. v. NPR, Inc., 2004 WL 444533 (M.D. Fla.)(granting motion to extend discovery and continue trial).

17. Counsel for Jane Doe 2-7 has already agreed to a similar modification of the schedules under the Trial Order.

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WHEREFORE, Epstein, through his counsel, requests that this court enter an Order:

- a. striking this case from the current trial docket;
- b. continuing the trial of this matter and setting same on a new trial docket at least three months (depending on when the Defendant can obtain his discovery, after this Court rules on the protective orders) after the current trial date; or, alternatively,
- c. modifying the current trial schedule to allow for at least an additional 3 months as to all deadlines, including the trial date; and
- d. for such other and further relief as this court deems just and proper.

By: ROBERT D. CRITTON, JR., ESQ.
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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 26th day of June, 2009

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