UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 08-CIV-80119-MARRA/JOHNSON

JANE DOE NO. 2,

Plaintiff,

vs.

JEFFREY EPSTEIN,

Defendant.
_____/

Related cases:
08-80232, 08-08380, 08-80381, 08-80994,
08-80993, 08-80811, 08-80893, 09-80469,
09-80591, 09-80656, 09-80802, 09-81092
_____/

Response To Plaintiff's, Jane Doe No.: 4, Motion for Protective Order (DE 534), 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 Doe's Motion for Protective Order (DE 534), With Incorporated Memorandum Of Law (the "Motion for Protective Order"). In support, Epstein states as follows:

I. Introduction & Argument

1. Plaintiff and her counsel have now resurrected their collective efforts to prevent discovery relating to Plaintiff's psychological, criminal and employment histories, as well as their general backgrounds. Plaintiff unreasonably continues to delay discovery knowing full well that the court has already entered orders allowing for discovery as to third parties. Plaintiffs once again requests that this court preclude Epstein from investigating these matters through one of the most traditional methods available in

the justice system, depositions.

2. Epstein has been faced with several motions seeking to prevent or limit discovery with the primary goal being to send Epstein to trial with little or no discovery. Plaintiff continues to avert discovery, and now she wishes to shelter her pasts by requesting that this court enter an order broadly limiting the rules of discovery and thus preventing Epstein from deposing third parties, including two individuals that were Jane Doe 4's soccer coaches for years (i.e., Rocky Orezzoli and Bill Brown). Limiting such discovery would undoubtedly result in reversible error. Plaintiff claims Epstein is harassing her by way of seeking those depositions; however, such is not the case. Coaches have an identifiably close relationship with their players and, often times, their players confide in them about events which they would not address with their very own parents. As such, these two deponents are clearly relevant, and their depositions are not being set as a means of harassment. Moreover, Defendant does not intend to violate the court's order at DE 433.

3. As the court knows, 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.

4. Plaintiff has objected to all meaningful discovery, and now she seeks to halt or limit traditional discovery methods at the very time she suspects Epstein is going to learn information that may diminish or disprove her claims. In fact, the questions outlined on pages 3-4 of DE 534 are clearly relevant to Plaintiff's general background (see infra), her sexually explicit experiences including, but not limited to, events taking place at strip clubs where Plaintiff was employed. Obviously, these questions go to the heart of the Epstein's defenses, including that of consent and ability to consent.

5. If this court precludes Epstein's lawyers from seeking information from third parties about the claims asserted against him by Jane Doe 4 (and others) 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. This would result in rewriting the rules of discovery, and the intended purpose of the rules would largely be disregarded (i.e., to obtain information necessary to prosecute and/or defend claims such that the element of unfair surprise is diminished). 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). This is evidenced through the intent of rule 26 disclosures.

6. As this court has recognized, Defendant should not have to rely on only those "handpicked witnesses disclosed by Plaintiff[] in discovery, and would thereby prejudice Epstein in mounting his defense to the claims raised against him. (DE 299, p.4)(**Exhibit "A"**). Likewise, at DE 432 (**Exhibit "B"**), this court denied Defendant's

Motion for Protective Order seeking to prevent the deposition of Third Party witness Igor Zinoview despite the fact that Mr. Zinoview was employed by Epstein post-dates giving rise to the facts alleged in these actions. This was the case even though several affidavits were provided supporting Zinoview's Motion for Protective Order. The court found that an order completely prohibiting the deposition from going forward is rare, Salter v. Upjohn co., 593 F.2d 649, 651 (5th Cir. 1979), and that Zinoview's conclusory affidavit in which he denies knowledge of the facts giving rise to these cases provide anything even approaching the rise of "extraordinary circumstances" necessary to prohibit the deposition. (DE 432). The same result should be reached here.

7. The party resisting discovery has a heavy burden of showing why the requested discovery should not be permitted. Rossbach v. Rundel, 128 F.Supp.2d 1348, 1354 (S.D. Fl. 2000) ("The onus is on the party resisting discovery to demonstrate specifically how the objected-to information is unnecessary, unreasonable or otherwise unduly burdensome."); Dunkin Donuts, Inc. v. Mary's Donuts, Inc., 2001 WL 34079319 (S.D. Fla. 2001) ("the burden of showing that the requested information is not relevant to the issues in the case is on the party resisting discovery") citation omitted); Gober v. City of Leesberg, 197 F.R.D. 519, 521 (M.D. Fla. 2000)("The party resisting production of information bears the burden of establishing lack of relevancy or undue burden in supplying the requested information"). To meet this burden, the party resisting discovery must demonstrate specifically how the objected-to request is unreasonable or otherwise unduly burdensome. See Fed. R. Civ. P.33(b)(4); Panola Land Buyers Ass'n v. Shuman, 762 F.2d 1550, 1559 (11th Cir. 1985); Rossbach, 128 F.Supp.2d at 1353. Thus, to even merit consideration, "an objection must show specifically how a discovery request is

overly broad, burdensome or oppressive, by submitting evidence or offering evidence which reveals the nature of the burden." Coker v. duke & Co.., 1777 F.R.D. 682, 686 (M.D. Ala. 1998). Plaintiff has failed to make such a showing. Therefore, her Motion for Protective Order should be denied. See e.g., DE 377, **Exhibit "C"**.

8. Obviously, Defendant is entitled to test Plaintiff's credibility as to her alleged involvement with Epstein, to determine the alleged effects on her as a result of any involvement with Epstein, to determine whether she ever spoke of any alleged psychological trauma with the deponents, and to determine if the deponents have any information supporting or denying Plaintiff's claim that she sustained damages as a result of their alleged involvement with Epstein. It is well settled that relevant information is discoverable, even if not admissible at trial, so long as the discovery is reasonably calculated to lead to the discovery of admissible evidence. Rule 26(b)(1), Fed.R.Civ.P.; Donahay v. Palm Beach Tours & trans., Inc., 242 F.R.D. 685 (S.D. Fla. 2007). See Hickman v. Taylor, 329 U.S. 495, 507-08 (1947); Oppenheimer Fund, Inc. v. Sanders, 437 U.S. 340, 351 (1978). In *Oppenheimer*, the Supreme Court discussed the concept of relevance in relation to Fed. R. Civ. P. 26(b) and noted that:

> The key phrase in this definition – "relevant to the subject matter in the pending action" – has been construed broadly to encompass any matter that bears on, or that reasonably could lead to other matters that could bear on, any issue that is or may be in the case. Consistent with the notice pleading system established by the Rules, discovery is not limited to issues raised by the pleadings, for discovery itself is designed to help define and clarify the issues. Nor is discovery limited to the merits of a case, for a variety of fact-oriented issues may arise during litigation that are not related to the merits.

See also Carenehammer v. Alber Corp., 138 F.R.D. 594 (S.D. Fla. 1991).

9. Many Plaintiffs, including Jane Doe 4, claim 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., **Exhibit "D"**, Affidavit of Richard C.W. Hall, outlining the psychological issues experienced by Jane Doe 4 as a result of incidents in her life prior to Epstein, which cannot be discounted. As such, Plaintiffs should not, once again, be able to "handpick" who Defendant deposes to refute their allegations.

10. Accordingly, Plaintiffs cannot expect this court to limit Epstein's discovery of the claims asserted against him. To hold otherwise will negatively effect information sought, thereby prejudicing Epstein and impacting the one day he will have in court to defend these allegations.

11. Furthermore, the pendency of a motion for protective order does not excuse the moving party from responding to discovery requests. Vipre Systems, LLC. v. NITV, LLC. 2007 WL 3202439 (M.D. Fla. 2007) and Sutherland v. Mesa Air Group, Inc., 2003 WL 21402549 (S.D. Fla. 2003).

III. Conclusion and Requested Relief

12. It is critical for this entire case that Epstein be able to conduct regular discovery, which includes investigating the claims Plaintiff makes against him. As Dr. Hall stated in his affidavit, "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 Plaintffs' ". . . 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 discovery, which will confirm or rebut Plaintiff's'' allegations. To hold otherwise would cause this court to accept Plaintiff's allegations as true without allowing Epstein to retain information to refute same.

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

By_____
ROBERT D. CRITTON, JR., ESQ.
Florida Bar #224162
MICHAEL J. PIKE, ESQ.
Florida Bar #617296

Certificate of Service

I HEREBY CERTIFY that a true copy of the foregoing was being served this day on all counsel of record identified on the following Service List via electronic mail (EMAIL) on this 28 day of April 2010.

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
303 Banyan Blvd., Suite 400
West Palm Beach, FL 33401
561/842-2820 Phone
561/253-0164 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

Brad Edwards, Esq.
Farmer, Jaffe, Weissing, Edwards, Fistos & Lehrman, PL
425 N. Andrews Ave.
Suite #2
Fort Lauderdale, FL 33301
Phone: 954-524-2820
Fax: 954-524-2822
Brad@pathtojustice.com
Counsel for Plaintiff in Related Case No. 08-80893

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

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

jagesq@bellsouth.net
Counsel for Defendant Jeffrey Epstein

Co-counsel for Plaintiff Jane Doe

Isidro M. Garcia, Esq.
Tara A. Finnigan, 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