

KAPLAN HECKER & FINK LLP

350 FIFTH AVENUE | SUITE 7110
NEW YORK, NEW YORK 10118
TEL (212) 763-0883 | FAX (212) 564-0883
WWW.KAPLANHECKER.COM

DIRECT DIAL 212.763.0884
DIRECT EMAIL rkaplan@kaplanhecker.com

January 10, 2020

VIA ECF

The Honorable Debra Freeman
United States District Court
Southern District of New York
Daniel Patrick Moynihan Courthouse
500 Pearl Street
New York, NY 10007

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

Dear Judge Freeman:

We represent Plaintiff Jane Doe in the above-captioned action. As Your Honor requested on November 21, 2019, we write to provide an update on the status of this matter with respect to settlement discussions, motion practice, and discovery.

We are pleased to report that progress has been made in all of these areas. Although Defendants have continued to decline to participate in meaningful discussions about the Victim's Compensation Program ("the Program"), Plaintiff has engaged in discussions about the Program with the selected program administrators.¹ After a conference with the parties on December 11, 2019, Judge Failla set a short briefing schedule for Defendants' contemplated motion to dismiss, which is limited to the issue of the availability of punitive damages. Judge Failla has further ordered that discovery should proceed while Defendants' motion concerning punitive damages is pending.² (Doc. No. 39.) Accordingly, Plaintiff and Defendants have agreed to a proposed discovery schedule, attached as Exhibit A, which we respectfully request that this Court enter in this case.

I. Status of Settlement Discussions

As Your Honor is aware, Defendants are in the process of establishing a Victim's Compensation Program ("the Program"), which they purport will allow Plaintiff and other

¹ As the Court is aware, the Estate unilaterally selected three administrators for the proposed settlement program: Kenneth R. Feinberg, Camille S. Biros, and Jordana H. Feldman (the "Administrators").

² A copy of the transcript of the conference before Judge Failla is attached as Exhibit B.

victims of sexual abuse by Jeffrey Epstein to settle their claims outside of litigation. (Doc. No. 28.) At the November 21 conference, Your Honor heard that Plaintiffs had been excluded from crucial decisionmaking about the Program and made suggestions for further discussions.

As a result, immediately following the November 21 conference, counsel for Plaintiffs wrote a letter to Defendants' counsel requesting two pieces of information: the total value of the Estate and the amount of that Estate that will set aside to compensate victims. (Ex. C.) In response, Defendants' counsel informed Plaintiffs that it is "not possible at present for the Co-Executors to state the total value of the Estate" and that Defendants also cannot "estimate how much money will ultimately be required to adequately fund the Program." (Ex. D.) While Plaintiff understands the limitations described by Defendants in their letter, it is obviously impossible for Plaintiff to reconcile Defendants' repeated representations that all credible claims will be appropriately satisfied with Defendants' representation that they do not know how much money the Estate has or how much the Program will have access to.³

Nevertheless, Plaintiff has still made good-faith efforts to learn about the proposed Program. The Program Administrators developed a Draft Protocol, which purportedly set forth the proposed criteria and requirements for the evaluation of claims and the claims process. (Ex. E.) The Administrators sent the Draft Protocol to Plaintiffs on December 13, 2020, and then opened a "comment period" to run through January 31, 2020. On January 7, 2020, counsel for several plaintiffs met with the three Program Administrators. At that meeting, Plaintiffs' counsel voiced several concerns with Draft Protocol, including, most importantly, that it provides no information on whether there are funds available to adequately satisfy all claims. On this point, the Administrators admitted that they too are completely in the dark as to the size of the Estate or the specific amount of funds available to settle claims. They nevertheless stated that Defendants have confirmed to the Administrators, without providing details, that there will be sufficient money available to pay all claims. With respect to methodology, while the Draft Protocol lists "factors" that the Administrators may consider in rendering a settlement offer, it does not describe how those factors will be monetized. The Administrators did not provide any information in response to this question, other than instructing Plaintiffs that the only way to find out how claims would be valued is to go through the Program and receive a settlement offer. The Program Administrators agreed to consider proposed revisions to the Protocol, which Plaintiff, in turn, submitted on January 9, 2020. (Ex. F.)

Although Plaintiff continues to have serious concerns about the Program, she remains open to continued dialogue. However, in light of the events described above, Plaintiff has no intention of agreeing to stay this litigation at this time and is ready to begin discovery. It is important to note that both the Administrators, who emphasized to us that a litigation stay is not a condition of participation in the program, and Judge Failla, who ordered that discovery will not be stayed pending Defendants' motion to dismiss, agree that discovery can and should begin in this case at this time.

³ As described herein, other than sending this letter, Defendants' counsel has not participated in any other discussions with Plaintiffs about potential settlement.

II. Defendants' Punitive Damages Motion

On December 2, 2019, Defendants filed a letter in anticipation of filing a “motion to dismiss” Plaintiff’s claim for punitive damages. (Doc. No. 35.) Defendants’ anticipated motion—which is more appropriately styled as a motion to strike—concerns the availability of only a single aspect of the relief sought by Plaintiff and does not challenge the adequacy of any of the causes of actions or allegations in the Complaint. Consequently, Plaintiff filed a letter response arguing that although punitive damages are unavailable against an Estate under a New York statute, Virgin Islands law, which should apply to the question, contains no such statutory bar. (Doc. No. 36.)

On December 16, 2019, Judge Failla set a briefing schedule for Defendants’ motion: Defendants’ motion to dismiss is due on January 15, 2020, Plaintiff’s opposition is due on February 14, 2020, and Defendant’s Reply is due February 28, 2020. Judge Failla further ordered that discovery in this case is not stayed and should proceed in accordance with a discovery schedule to be set by Your Honor. (Doc. No. 39.)⁴

III. Discovery

Following Judge Failla’s December 16 order, and in light of this Court’s order that the parties submit a discovery proposal in today’s status report, Plaintiff and Defendants have met and conferred on a discovery schedule. During the course of these discussions, and during the conference in front of Judge Failla, Plaintiff has represented that she expects discovery in this case to be extremely narrow. (Ex. B at 12:22-13:4.) Plaintiff has estimated that there will be approximately five fact witnesses, that she will proffer no more than two experts, and has stated that she is willing to waive a jury trial. (*Id.* at 12:22-13:4; 14:22-25.)

In light of the foregoing, Defendants and Plaintiff have agreed on the proposed discovery schedule attached as Exhibit A, and respectfully request that this Court enter that schedule in this case.

Respectfully submitted,



Roberta A. Kaplan

cc: Counsel of Record (*via* ECF)

⁴ During the hearing on Defendants’ anticipated motion, they raised, for the first time, their view that if Virgin Islands law applies to the question of punitive damages, it should apply to Plaintiff’s entire claim, which would purportedly render it time-barred under Virgin Islands law. Judge Failla expressed great skepticism about this position (Ex. B at 26: 13-17) and, in any event, determined discovery should not be stayed even after Defendants’ suggested they might advance this argument.