

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

**EPSTEIN'S MOTION TO COMPEL PRESIDENTIAL WOMEN'S
CENTER TO COMPLY WITH SUBPOENAS *DUCES TECUM***

Defendant, JEFFREY EPSTEIN ("Epstein"), pursuant to Rule 45(c)(2)(B)(i), Federal Rules of Civil Procedure, moves to compel Presidential Woman's Center to comply with subpoenas *duces tecum* served by Epstein, and states:

1. On November 13, 2009, Epstein served Subpoenas *duces tecum* (attached as Composite Exhibit A) on the records custodian of Presidential Women's Center¹ seeking:

A copy of the entire file of [Plaintiff], whose date of birth [] and social security number is [], including but not limited to any forms completed by the patient, medical records, reports, lab or diagnostic test results, consultants' reports, letter to and from the patient, handwritten office notes by any person, telephone messages, computer data kept on the patient, attorney letters, photographs, charts, intake forms, release form and consultations from January 1, 1999 through the date of this Subpoena.²

¹ Presidential Women's Center is the primary, if not the only, facility in Palm Beach County that performs abortions. Presidential Women's Center is the only business listed in West Palm Beach on Yellowpages.com under "Abortion Services."

² The subpoenas for Jane Doe Nos. 2, 3 and 5 – 8 are identical, save for their names, dates of birth and social security numbers.

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2. On November 25, 2009, Jane Doe Nos. 2, 3 and 5 – 8 (“Plaintiffs”) served an Objection to Subpoena Duces Tecum Dated November 13, 2009 Issued to Presidential Women’s Center (“Objection”) (attached as **Exhibit B**). In their Objection, Plaintiffs argue that the “subpoena’ is not *reasonably calculated* to lead to the discovery of admissible evidence and constitutes an invasion of the privacy rights of the plaintiffs.”³ (Emphasis in original). Plaintiffs also argue that there is no evidence that Plaintiffs had an abortion or were seen or treated at Presidential Women’s Center. See Exhibit B.

3. Plaintiffs’ argument that the subpoena is an invasion of privacy rights should fall on deaf ears as the issue of whether Plaintiffs had abortions is directly relevant to their damage claims in this case.

4. This is yet another attempt by Plaintiffs to control discovery and insulate themselves and their witnesses by asking the Court to disallow discovery of information directly relevant and material to her damage claims on the basis that it may be “an invasion of privacy rights.” However, the Court has already ruled, on a number of occasions, that Plaintiffs’ past and present medical, psychological, familial and social histories is relevant and discoverable and goes to the heart of Plaintiff’s damage claims :

- a. Plaintiffs’ attorneys sought to preclude the Epstein from serving third party subpoenas and allowing only Plaintiffs’ counsel to obtain those materials and “filter them” to defense counsel. That motion was denied, and the Court, “agree[ing] that Defendant is entitled to discovery related to the allegations in Plaintiffs’ complaints,” tailored a method such that the Epstein could obtain the records directly. See DE #253 at 4 – 5.

³ Abortions are known to cause emotional and psychological side effects such as relationship issues, suicidal thoughts and feelings, eating disorders, depression, anxiety, regret, anger, guilty feelings, shame, loneliness or isolation, impaired self confidence, insomnia or nightmares. See <http://www.americanpregnancy.org/unplannedpregnancy/abortionemotionaleffects.html>

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- b. "Under these circumstances, where Plaintiff is seeking to recover expenses associated with these complex medical issues, full knowledge of Plaintiff's past and present medical, psychological, familial and social histories is essential." See DE #289 at 4.
- c. "As a global matter, Plaintiffs clearly and unequivocally place their sexual history in issue by their allegations that Epstein's actions in this case has negatively affected their relationships by, among other things, 'distrust in men, 'sexual intimacy problems,' 'diminished trust,' 'social problems,' 'problems in personal relationships,' 'feelings of stress around men,' 'premature teenage pregnancy,' 'antisocial behaviors,' and 'hypersexuality and promiscuity.' Considering these allegations, there simply can be no question that Epstein is entitled to know whether Plaintiffs were molested or the subject of other 'sexual activity' or 'lewd and lascivious conduct' in order to determine whether there is an alternative basis for the psychological disorders Plaintiffs claim to have sustained.... To deny Epstein this discovery, would be tantamount to barring him from mounting a defense." See DE #377 at 10.
- d. "The Court agrees with Epstein that all of the foregoing issues [which included 'multiple aborted pregnancies'] are directly relevant to Plaintiffs' damage claims and credibility...." See DE #413 at 4.

5. Information related to any abortions Plaintiffs had directly impacts Plaintiffs' damage claims and may provide an "alternative basis for the psychological disorders Plaintiffs claim to have sustained." See DE # 377 at 10. Indeed, Jane Doe No. 4 (who is represented by counsel for Jane Doe Nos. 2, 3 and 5 – 8, yet notably absent from the instant Objection) testified that three abortions she had caused her more emotional trauma than her encounters with Mr. Epstein. See 10/27/09 Deposition of Jane Doe No. 4 at 304 – 305; see also fn. 3 supra.

6. Last, Plaintiffs' argument that these subpoenas are a "shot in the dark" attempt to obtain discovery is also unpersuasive. Presidential Women's Center is the primary, if not the only, facility in Palm Beach County that performs abortions. If Plaintiffs had an abortion in Palm Beach County, it was most likely at Presidential Women's Center. Moreover, Jane Doe No. 5's medical records indicate she had four pregnancies and two abortions. See 8/20/01 record

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for Institute for Women's Health & Body attached as **Exhibit C**. Thus, it is clear the subpoenas are reasonably calculated to lead to the discovery of admissible evidence.

7. For the foregoing reasons, the Court should overrule Plaintiffs' Objection, grant the instant Motion and compel Presidential Women's Center to respond to the subpoenas.

WHEREFORE, Epstein respectfully requests the Court deny Plaintiffs' Objection, grant the instant Motion and compel Presidential Women's Center to Respond to the subpoenas *duces tecum* attached to this Motion as Composite Exhibit A within ten (10) days of the Court's order and grant any additional relief the Court deems just and proper.

Rule 7.1 Certification

I hereby certify that counsel for the respective parties communicated via telephone in a good faith effort to resolve the discovery issues prior to the filing of this motion to compel.

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 2nd day of December, 2009

Respectfully submitted,

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Certificate of Service
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