UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

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

JANE DOE NO. 3,

Plaintiff,

vs.

JEFFREY EPSTEIN,

Defendant.
_____/

MOTION FOR PROTECTIVE ORDER AGAINST PIECEMEAL DEPOSITIONS OF JANE DOE NO. 3, MOTION TO CONSOLIDATE CASES FOR PURPOSES OF DISCOVERY, AND INCORPORATED MEMORANDUM OF LAW IN SUPPORT

Plaintiff, Jane Doe No. 3, by and through undersigned counsel, files this Motion for Protective Order Against Piecemeal Depositions of Jane Doe No. 3, Motion to Consolidate Cases for Purposes of Discovery, and Memorandum of Law in Support, as follows:

I. Introduction

This is one of six (6) related cases in this Court against Defendant Jeffrey Epstein, each alleging that the Defendant sexually assaulted the Plaintiff in that case when she was a minor. This Motion is prompted by the Defendant's efforts to take the deposition of Plaintiff Jane Doe No. 3 as a *witness* in the related case, Jane Doe No. 2 v. Epstein, case no. 08-CV-80119-Marra/Johnson. Defendant, however, does *not* at this time seek to take Jane Doe No. 3's deposition in her own case. The Defendant apparently intends to take Jane Doe No. 3's deposition *at least twice*, and as discussed below, most likely three times.

Plaintiff Jane Doe No. 3 alleges that she is a victim of sexual assault by Defendant Epstein. To compel her to sit for deposition by Epstein's attorney *more than once* would be unduly

traumatizing, burdensome, annoying, harassing and, most importantly, unnecessary. There is no conceivable good faith basis for Defendant's attorney to require that Jane Doe No. 3's deposition to be taken more than once.

Accordingly, Jane Doe No. 3 seeks a protective order limiting Defendant's counsel to a single deposition of Jane Doe No. 3, encompassing her claims as a party in her own case and as a witness in any other case pending in this Court against Defendant Epstein alleging sexual misconduct. As a corollary to this relief, Plaintiff moves for consolidation of the six (6) related cases for purposes of pretrial discovery pursuant to Fed.R.Civ.P. 42(a).

II. Background and Relevant Facts

The cases Jane Doe No. 2 v. Epstein, case no. 08-CV-80119-Marra/Johnson, Jane Doe No. 3 v. Epstein, case no. 08-CV-80232- Marra/Johnson, Jane Doe No. 4 v. Epstein, 08-CV-80380-MARRA/JOHNSON, Jane Doe No. 5 v. Epstein, case no. 08-CV-80387- Marra/Johnson, Jane Doe No. 6 v. Epstein, case no. -CV-80994- Marra/Johnson and Jane Doe No. 7 v. Epstein, case no. 08-80993-CIV- Marra/Johnson, are related cases in this Court.[1] These cases have been treated jointly for purposes of pretrial scheduling and deadlines. The Court entered a single Order Setting Trial and Discovery Deadlines et al., dated September 29, 2008, in the four cases, Jane Does 2-5 v. Epstein, (DE 40). The Jane Doe No. 6 and Jane Doe No. 7 cases, which were filed later, were likewise treated jointly and a single Order Setting Trial Date and Discovery Deadlines et al. entered for those cases dated December 18, 2008.

[1] In all of the cases Jane Doe Nos. 2-7 v. Epstein, the Plaintiffs are represented by the same counsel. There are other similar cases pending in this Court and in state court against Defendant Epstein in which the plaintiffs are represented by different counsel.

On September 25, 2008, the parties filed a single Joint Scheduling and Discovery Report in the four cases, Jane Doe Nos. 2-5. (DE 39). In this Report, the Plaintiff takes the position that it would be in the interests of judicial economy and efficiency to consolidate these cases at least for discovery purposes. (Joint Report, p. 5, §II(D)). The Defendant, however, states in this Report his position in opposition to consolidation for any purpose. (Id.).

All of the cases Jane Doe Nos. 2-7 v. Epstein allege sexual assaults by Defendant Epstein. They all make identical claims for relief for Sexual Assault and Battery (Count I); Intentional Infliction of Emotional Distress (Count II); and Coercion and Enticement to Sexual Activity in Violation of 18 U.S.C. §2422 (Count III). Most importantly for present purposes, they all allege the same plan and scheme by Defendant Epstein to lure underage girls to his Palm Beach mansion for the purpose of giving a massage, and that he sexually molested them during the course of this massage. (See, e.g., Jane Doe No. 3 Second Amended Complaint ¶¶ 7-11; Jane Doe 4, Second Amended Complaint, ¶¶ 8-12).

Jane Doe No. 3 in discovery responses served on January 26, 2009 disclosed that she brought three other girls to Epstein's mansion for the purpose giving him a massage. These other girls include Plaintiffs Jane Doe No. 2 and Jane Doe. No. 4. (see Plaintiff Jane Doe 3's Answers to Interrogatories, no. 23, attached hereto as Exhibit "A").

On March 16, 2009, Defendant's counsel served a Notice of Taking Deposition of Jane Doe No. 3 in the Jane Doe No. 2 case (A copy of this Notice is attached hereto as Exhibit B).[2] By letters dated March 3, 2009 and March 20, 2009, Plaintiff's counsel advised Defendant's counsel that Plaintiffs oppose the taking of their depositions more than once, and insisted that each Plaintiff's deposition be noticed in her own case as well as any other case in which she is a witness.

Defendant's counsel has to date failed to respond to this correspondence, or otherwise provide any reason why he should be allowed to take a victim's deposition more than once. Absent a protective order or other relief, Defendant's counsel could take Jane Doe No. 3's deposition three times, once in her own case and as a witness in both the Jane Doe No. 2 and Jane Doe No. 4 cases. (See Exh. "A").

III. Argument

A. A PLAINTIFF IN THESE CASES SHOULD NOT BE REQUIRED TO APPEAR FOR DEPOSITION MORE THAN ONCE

The district court has discretion to fashion a protective order under Fed.R.Civ.P. 26(c). Farnsworth v. Procter & Gamble Co., 758 F.2d 1545 (11th Cir. 1985). This discretion "does not depend upon a legal privilege." Id.; Auto Owners Ins. Co. v. Southeast Floating Docks, Inc., 231 F.R.D. 426, 429-30 (M.D.Fla. 2005). Under Rule 26(c), "the Court may, for good cause, issue an order to protect a party or person from annoyance, embarrassment, oppression or undue burden or expense."

The federal rules expressly recognize that a party should not without cause be deposed more than once. Fed.R.Civ.P. 30(a)(2)(B). "[I]t is clear that the prohibition against deposing a second witness without leave of court exists to protect the witness. Indeed, cases construing Rule 30(a)(2)(B) concern protection of the deponent from, for example, undue burden or harassment." Beaulieu v. Bd. of Trustees, 2007 WL 4468704 (N.D. Fla. 2007). See also Fed.R.Civ.P. 26(b)(2)(C)(i) (directing the court to limit the frequency or extent of discovery otherwise allowed under the rules where "the discovery sought is unreasonably cumulative or duplicative, or can be obtained from some other source that is more convenient, less burdensome, or less expensive").

[2] The deposition was unilaterally scheduled for April 14, 2009.

Additionally, Fed.R.Civ.P. 45(c) provides that the party or attorney issuing a subpoena must take reasonable steps to avoid imposing an undue burden on the deponent, and that the Court may impose an appropriate sanction, including reasonable attorneys' fees, if the party or attorney fails to comply. In the present cases, where sexual misconduct is at issue, Jane Doe No. 3 will be unduly burdened by one or more separate depositions of her as a witness, to be followed by her deposition as a party. See Miscellaneous Docket Matter #1 v. Miscellaneous Docket Matter #2, 197 F.3d 922, 925 (8th Cir. 1999) (case where sexual matters at issue, holding that district court was warranted in quashing subpoena of witness' second deposition to protect witness from embarrassment and undue burden).

Defendant's counsel seeks to circumvent these rules by noticing Jane Doe No. 3's deposition first as a witness in the Jane Doe No. 2 case, apparently to be followed by her depositions in her own case and the Jane Doe No. 7 case. Such multiple depositions of the Plaintiff would be contrary to judicial economy and efficiency, and would serve only to unduly harass, annoy and burden the Plaintiff. Defendant's counsel has offered no reason whatsoever why Jane Doe No. 3's deposition should not be taken just once, encompassing her knowledge of facts and information relevant to all three related cases. It is inconceivable that Defendant's counsel would be prejudiced if Jane Doe No. 3 were to sit for deposition just once.

Accordingly, good cause exists for a protective order preventing Defendant from taking Plaintiff's deposition piecemeal in separate cases, and requiring that the Plaintiff's deposition be taken just once, covering all of the related cases against Epstein.

B. THESE RELATED CASES SHOULD BE CONSOLIDATED FOR PURPOSES OF DISCOVERY

As a corollary to the protective order sought by Jane Doe No. 3, the problem of multiple depositions of any Plaintiff could be avoided by consolidating the related cases for purposes of pretrial discovery pursuant to Fed.R.Civ.P. 42(a). Consolidation may be appropriate where "actions before the court involve a common question of law or fact", and in such cases the court is authorized to issue "orders to avoid unnecessary cost or delay." Fed.R.Civ.P. 41(a)(3). "Consolidation of actions in their pretrial stage, under many circumstances, will be a desirable administrative technique and is within the power of the Court." Wright & Miller, Federal Practice & Procedure, §2382 (2008). See also Newman v. Eagle Building Technologies, 209 F.R.C. 499, 501 (S.D. Fla. 2002) (noting that Court has broad discretion under Rule 42(a) to consolidate cases within its district). "In deciding whether to consolidate actions, we have instructed that district courts should consider whether doing so could lead to prejudice or confusion." Ramsay v. Broward County Sheriff's Office, 2008 WL 5237162 *3 (11th Cir. 2008).

The common and overlapping issues in this case, both factual and legal, are patent and obvious. Here, Plaintiff moves for limited consolidation, for purposes of pretrial discovery only. Such a consolidation is common and appropriate to further the interests of judicial economy and efficiency. See, e.g., In re Enron Corp. Securities Litigation, 206 F.R.P. 427, 438 (S.D. Tex. 2002). At the same time, there is no conceivable prejudice or confusion that would result from consolidation for purposes of pretrial discovery. To the contrary, consolidation will avoid unnecessary prejudice and confusion. For example, with regard to the instant Motion, consolidation for purposes of discovery would make it clear that each party/witness can only be deposed once, covering all issues in the related cases.

WHEREFORE, Plaintiff respectfully requests (i) a protective order pursuant to Fed.R.Civ.P. 26(c) requiring that the deposition of Jane Doe No. 3 be taken no more than once, for purposes of all

of the related case to which her testimony may be relevant; (ii) an order pursuant to Fed.R.Civ.P. 45 quashing the unilateral nonparty subpoena for deposition of Jane Doe No. 3 in the Jane Doe No. 2 case; (iii) an order pursuant to Fed.R.Civ.P. 42(a) consolidating the Jane Doe Nos. 2-7 v. Epstein cases for purposes of pretrial discovery; and (iv) such other and further relief as this Court deems just and proper.

Dated: March 26, 2009

Respectfully submitted,

By: s/ Stuart S. Mermelstein

Stuart S. Mermelstein (FL Bar No. 947245)
ssm@sexabuseattorney.com
Adam D. Horowitz (FL Bar No. 376980)
ahorowitz@sexabuseattorney.com
MERMELSTEIN & HOROWITZ, P.A.
Attorneys for Plaintiff
18205 Biscayne Blvd., Suite 2218
Miami, Florida 33160
Tel: 305-931-2200
Fax: 305-931-0877

CERTIFICATE PURSUANT TO S.D.FLA.L.R. 7.1(A)(3)

Counsel for Plaintiff has made reasonable efforts to confer with counsel for Defendant, by letters dated March 3, 2009 and March 20, 2009 and by telephone, seeking in good faith to resolve or narrow the issues raised in the Motion, but Defendant's counsel failed to respond to Plaintiff's letters, and Plaintiff's counsel has been unable to resolve this dispute.

s/ Stuart S. Mermelstein

CERTIFICATE OF SERVICE

I hereby certify that on March 26, 2009, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day to all parties on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those parties who are not authorized to receive electronically Notices of Electronic Filing.

/s/ Stuart S. Mermelstein .

SERVICE LIST
DOE vs. JEFFREY EPSTEIN
United States District Court, Southern District of Florida

Jack Alan Goldberger, Esq.
jgoldberger@agwpa.com

Robert D. Critton, Esq.
rcritton@bclclaw.com

/s/ Stuart S. Mermelstein