

# 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

June 1, 2020

## VIA ECF

Hon. Judge Freeman  
Daniel Patrick Moynihan  
United States Courthouse  
500 Pearl St.  
New York, NY 10007

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

Dear Judge Freeman:

We write on behalf of both parties in the above-referenced action pursuant to this Court's Order dated April 21, 2020 (Doc. No. 60) to update the Court as to the status of discovery and the progress of settlement discussions.

**Discovery.** As the Court is aware, fact discovery in this matter began on January 21, 2020 (Doc. No. 48), and the parties exchanged their First Sets of Interrogatories and Requests for Production of Documents on March 10, 2020. Since that time, the parties have met and conferred repeatedly on the scope and timeline of discovery, including issues pertaining to specifically to electronically-stored information (ESI) discovery. The parties have made substantial progress on narrowing the areas of dispute between them and on agreeing to a process for searching and producing ESI. While some disputes remain, discussions between the parties are ongoing and, as a result, there are no issues that parties wish to raise with the Court at this time, though the parties reserve their rights to do so in future if necessary.

Since the commencement of fact discovery, Plaintiff has made two productions of documents and is on track to substantially complete her production of documents by the week of June 8, 2020. This week, Defendants will produce non-privileged, documents that hit on search terms reviewed and approved by Plaintiff's counsel.

**Settlement.** Plaintiff's statement: With respect to settlement, the parties have had no meaningful discussions since the last status conference before this Court on February 11, 2020. On May 29, 2020, Jordana Feldman, the program administrator selected by the Estate, sent Plaintiff's counsel a final version of the protocol for the Program and indicated that she will be reaching out to plaintiffs' counsel directly to discuss the process. Earlier today, the Co-Executors filed in the Superior Court of the Virgin Islands the status report attached hereto as

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2

Exhibit A. As stated therein, the Co-Executors, with the support of claimants' counsel and the USVI Attorney General, intend to authorize commencement of the Program on Monday, June 15, 2020.

While Plaintiff remains open to continued dialogue about the program, she continues to believe that her best option is to proceed to trial before Judge Failla and is unlikely to agree to any stay of the proceedings pending any discussions with Ms. Feldman and her colleagues.<sup>1</sup> Indeed, at the conference before Judge Failla on December 11, 2019, Plaintiff already offered to waive her right to a jury trial and proceed with a bench trial. Plaintiff's view is that this concession should mitigate, if not eliminate, many of the logistical concerns presented by the current pandemic.

Defendants' statement: Plaintiff's statements above are regrettable and inaccurate. However, it would serve no purpose to engage in an unnecessary back-and-forth. We respectfully refer the Court to Exhibit A and the overwhelming support for the program among plaintiffs' counsel.

***Motion to Dismiss.*** Defendants' motion to dismiss Plaintiff's claim for punitive damages has been fully briefed since February 8, 2020 and remains pending before Judge Failla.

Defendants' statement: Judge Engelmayer dismissed two other plaintiffs' claims for punitive damages against the Co-Executors on grounds applicable to Plaintiff's punitive damages claim in this action.

Respectfully submitted,



Roberta A. Kaplan

cc: Judge Failla  
Counsel of Record

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<sup>1</sup> The protocol established by the claims administrator explicitly states that to claimants can or should be required to stay her case in order to participate in the claims program. *See* Ex. A at 13. (Defendants note: That is not what the Protocol states. Claimants are not required to stay their actions to participate in the Program. However, they are permitted to stay their actions; and certainly discovery. Nor does the Protocol prevent this Court from making any discovery orders, including stays.)