UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

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

JANE DOE NO. 3,

Plaintiff,

vs.

JEFFREY EPSTEIN,

Defendant.
_____/

PLAINTIFF'S REPLY MEMORANDUM IN SUPPORT OF MOTION FOR PROTECTIVE ORDER AGAINST PIECEMEAL DEPOSITIONS, AND MOTION TO CONSOLIDATE FOR PURPOSES OF DISCOVERY

Plaintiff, by and through undersigned counsel, files this Reply Memorandum In Support of Motion for Protective Order Against Piecemeal Depositions, and Motion to Consolidate for Purposes of Discovery, as follows:

I. DEFENDANT FAILS TO SET FORTH ANY PREJUDICE OR CONFUSION THAT WOULD MILITATE AGAINST CONSOLIDATING THESE CASES FOR PURPOSES OF DISCOVERY

In response to Plaintiffs' Motion to Consolidate, Defendant asserts that not all common issues of fact are present and the parties are not identical. These are not reasons to deny consolidation, particularly the limited consolidation for purposes of discovery sought here.[1] Rule 42(a), Fed.R.Civ.P., requires only *a* common question of law or fact, and there need not be an identity of parties. Defendant also asserts without support or explanation that "confusion will result and motions in limine will undoubtedly be filed. . . ." In Ramsay v. Broward County Sheriff's Office, 303 Fed. Appx. 761, 2008 WL 5237162 (11th Cir. 2008), the Court affirmed the District

[1] In a case relied upon by Defendant, Kelly v. Kelly, 911 F.Supp. 66 (N.D.N.Y. 1996), the issue was consolidation for purposes of joint trial, so that case is inapposite here.

Court's consolidation of two employment discrimination actions, noting that the party opposing consolidation "has failed to show that the district court abused its discretion by consolidating the two actions insofar as she has introduced no evidence establishing confusion or prejudice." Id. at *3 & n. 5.

The risk of confusion or prejudice is generally more likely to arise when there is consolidation for purposes of trial, which is not being sought in the present cases at this time. See Hendrix v. Raybestos – Manhattan, Inc., 776 F.2d 1492, 1495 (11th Cir. 1985). Here, the common and overlapping motion practice in these cases attests to the efficiencies to be gained by consolidating for purposes of discovery. Additionally, these cases are on the same or similar discovery tracks, so there would be no prejudice or confusion arising from the cases being at different stages of litigation. See Borough of Olyphant v. PPL Corp., 153 Fed. Appx. 80, 2005 WL 2673489 (3d Cir. 2005) (a case cited by Defendant, the Court noted that it has discretion to deny a motion to consolidate "if it would cause delay in one of the cases or if one of the cases is further into discovery than the other case"); see also Ford Motor Credit Co. v. Chiorazzo, 529 F.Supp. 2d 535, 542 (D.N.J. 2008) (denying consolidation of two actions because discovery was nearly complete in one while the other was in its preliminary stages).

It is within this Court's broad discretion to consolidate: "[Rule 42(a)] is a codification of a trial court's inherent managerial power 'to control disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants.' " Hendrix, 776 F.2d at 1495 (citation omitted). Given the nature of these cases, the common facts alleged and the common issues of law, consolidation for purposes of discovery would be in the interests of judicial economy and efficiency. Defendant fails to set forth anything to the contrary.

II. THERE SHOULD BE ONLY ONE DEPOSITION FOR EACH PLAINTIFF

In response to Plaintiff's Motion for Protective Order to limit Defendant to a single deposition of each Plaintiff, Defendant fails to set forth any reason why it needs to take two separate depositions of each Plaintiff. Defendant asserts that it has the right to take both party depositions and witness depositions, which Plaintiff does not dispute. Where the same person is both party and witness in related cases, however, it makes eminent sense that there should be only one deposition of that person. The Court's authority to grant a protective order in this regard falls squarely within Rule 26(c), which allows such an order to be issued to protect a party from annoyance, embarrassment, oppression, or undue burden or expense. The unnecessary burden and harassment that would arise from more than one deposition of a plaintiff/victim in these cases is patent and obvious, particularly since these cases concern sensitive fact issues of sex with minors.

In opposition to the Motion, Defendant makes a vague reference to "proper preparation", but fails to articulate how its preparation will be prejudiced or otherwise adversely affected by a single deposition of each Plaintiff.[2] To the contrary, separate depositions would create an artificial, awkward dividing line between which questions are of the deponent as a witness and which are of the deponent as a party, likely giving rise to unnecessary disputes and motion practice. Given the common and overlapping facts in these cases, there is no reason why a party witness cannot be questioned in a single sitting on all facts pertinent to Epstein. A protective order is therefore warranted in these cases so that each Plaintiff has her deposition taken only once.

Conclusion

[2] Defendant offers as a "compromise" to limit each Plaintiff to two depositions. This would not sufficiently ameliorate the problem and concern raised in the Motion. Defendant fails to proffer any reason why it is necessary to take two separate depositions of the same witness.

Based on the foregoing, and for the reasons set forth in Plaintiff's Motion for Protective Order, Motion to Quash Subpoena, and Motion to Consolidate for purposes of discovery, Plaintiff respectfully requests an Order (i) consolidating these cases for purposes of discovery; (ii) limiting the Defendant to a single deposition of each Plaintiff; and (iii) such other and further relief this Court deems just and proper.

Dated: April 27, 2009

Respectfully submitted,

By: s/ Stuart S. Mermelstein

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CERTIFICATE OF SERVICE

I hereby certify that on April 27 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

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