

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

JANE DOE NO. 2,

CASE NO.: 08-CV-80119-MARRA/JOHNSON

Plaintiff,

vs.

JEFFREY EPSTEIN

Defendant.

/

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

JANE DOE NO. 3,

Plaintiff,

vs.

JEFFREY EPSTEIN

Defendant.

/

CASE NO.: 08-CV-80380-MARRA/JOHNSON

JANE DOE NO. 4,

Plaintiff,

vs.

JEFFREY EPSTEIN

Defendant.

/

CASE NO.: 08-CV-80381-MARRA/JOHNSON

JANE DOE NO. 5,

Doe 101 v. Epstein
Page 2

Plaintiff,

JEFFREY EPSTEIN,

Defendant.

/

CASE NO.: 08-80994-CIV-MARRA/JOHNSON

JANE DOE NO. 6,

Plaintiff,

JEFFREY EPSTEIN,

Defendant.

/

CASE NO.: 08-80993-CIV-MARRA/JOHNSON

JANE DOE NO. 7,

Plaintiff,

JEFFREY EPSTEIN

Defendant.

/

CASE NO.: 08-80811-CIV-MARRA/JOHNSON

Plaintiff,

JEFFREY EPSTEIN

Defendant.

/

CASE NO.: 08-80893-CIV-MARRA/JOHNSON

JANE DOE,

Doe 101 v. Epstein
Page 3

Plaintiff,

JEFFREY EPSTEIN et al,

Defendants.

DOE II,

CASE NO.: 09-80469-CIV-MARRA-JOHNSON

Plaintiff,

JEFFREY EPSTEIN et al,

Defendants.

JANE DOE NO. 101,

CASE NO.: 09-80591-CIV-MARRA-JOHNSON

Plaintiff,

JEFFREY EPSTEIN

Defendant.

JANE DOE NO. 102,

CASE NO.: 09-80656-CIV-MARRA/JOHNSON

Plaintiff,

JEFFREY EPSTEIN,

Defendant.

DEFENDANT, JEFFREY EPSTEIN'S REPLY TO JANE DOE NO. 101 AND JANE DOE NO. 102'S RESPONSE IN OPPOSITION TO MOTION TO COMPEL AND IDENTIFY JANE DOE NUMBERS 101 AND 102 IN THIRD PARTY SUBPOENAS FOR PURPOSES OF DISCOVERY

Doe 101 v. Epstein
Page 4

Defendant, Jeffrey Epstein, ("Mr. Epstein"), by and through his undersigned attorneys, hereby files his Reply To Jane Doe No. 101 And Jane Doe No. 102's Response In Opposition To Motion To Compel and Identify Jane Doe Numbers 101 and 102 in Third Party Subpoenas For Purposes of Discovery:

1. Plaintiffs' Response in Opposition is set forth in DE 124. Plaintiffs' response is drafted in a calculated effort to continue to argue issues relating to 18 U.S.C. 2255 rather than deal solely with the issue of identification of the Plaintiffs. Obviously, Plaintiffs' identification takes a second seat to Plaintiffs' attempt to continue to argue issues that are or may be set forth in their opposition to Epstein's motion to dismiss, which largely deals with issues surrounding 18 U.S.C. 2255. See Defendant's Motion to Identify Jane Doe 101 [DE 16].

2. In their response, Plaintiffs seem to forget that they brought this lawsuit against Epstein. Plaintiffs claim they will suffer physical injury, pain and suffering, emotional distress, psychological and psychiatric trauma, mental anguish, humiliation, confusion, embarrassment, loss of educational opportunities, loss of self-esteem, loss of dignity, invasion of her privacy, separation from her family, medical and psychological expenses, loss on income, loss of the capacity to earn income in the future, and loss of the capacity to enjoy life. See e.g., ¶¶28, Comp., DE 1; see also ¶¶36, 40, 44, 48, 52, 56, 61, 65, and 69, Comp., DE 1. Jane Doe 101 and 102 came to Defendant's home on a number of occasions. Jane Doe 101 brought her friend, Haley Robson (referenced by name in a number of actions) to experience this same "trauma" – it does not make sense. Jane Doe 101 had issues associated with law enforcement involving drugs, battery, fleeing police; Jane Doe 102 claims to have been raped by two (2) individuals in 1998; pre any involvement with Epstein. This type of information is relevant, and Defendant is entitled

Doe 101 v. Epstein

Page 5

to fully explore it. As such, Plaintiffs' have placed their past and medical history as well as education, social, work, interpersonal, recreational legal, criminal and other aspects of their past and current lives at issue in light of the allegations they allege in their respective complaints. Despite Plaintiffs contention and effort to mislead this court, Epstein does not wish to publicize Plaintiffs' names in an effort to embarrass them. On the contrary, Epstein wishes to defend the claims made against him and dispute the damages Plaintiffs' claim by conducting discovery. Again, Plaintiffs allege substantial economic and non-economic personal injury damages. If this Court prevents Epstein from serving Third-Party Subpoenas identifying Plaintiffs, Epstein will be denied his due process rights by Plaintiffs in that he will be prevented from conducting broad, open and liberal discovery. The undersigned must serve subpoenas on medical doctors to obtain medical information related to Plaintiffs' alleged psychological and physical damages and or other third parties such as employees for other damages as same goes to the heart of Epstein's defenses and Plaintiffs' damages. Plaintiffs' intent is to have Epstein try this case without having obtained relevant and meaningful discovery. Plaintiff's proposal will chill Defendant's ability to fully and fairly access and obtain discovery. See infra.

3. Plaintiffs' counsel are competent trial attorneys well versed in many areas of the law, including that of personal injury. Despite the foregoing, Plaintiff's counsel, in some highlighted effort to resolve the discovery issues Plaintiffs have intentionally created in an effort to chill discovery, offers to provide only the documents that Plaintiffs' counsel obtains from third parties through its own selective procedures, and only after Plaintiffs' counsel has been able to cull through same.

Doe 101 v. Epstein
Page 6

4. It is hard to believe that any competent law firm responsible to his/her client would ever allow an opposing party to request records and provide those records to the requesting firm only after the opposing firm had an opportunity to review and filter through same. Plaintiffs, in this case, seek thousands if not millions in damages, including physical and emotional/mental and personal injury type, and Epstein must and is entitled to conduct his own discovery thereon. No valid discovery objections or exemptions exist preventing necessary and reasonable discovery. To hold otherwise prevents Mr. Epstein from preparing and defending this matter and denies to him his right to fully and fairly defend these cases.

5. Plaintiffs cite a host of cases for the proposition that anonymity should be granted when, for instance, a fear of retaliation or ostracism exists. Inconsistent with the cases Plaintiffs cite, not once do they state that Plaintiffs will be embarrassed, ostracized, or psychologically and emotionally unable to proceed with the action. Even so, embarrassment alone is not enough. See Response to Motion to Proceed Anonymously. In determining whether to allow a party to proceed with litigation anonymously, a court must consider whether the identification poses a risk of retaliatory physical or mental harm to the requesting party or even more critically, to innocent non-parties. Doe. No. 2 v. Kolko, 242 F.R.D. 193, 195-98 (E.D.N.Y. 2006), citing, Fed.Rules Civ.Proc.Rule 10(a), 28 U.S.C.A. Further, Plaintiffs cite cases wherein a psychologist opined that plaintiff suffered or will suffer sever emotional distress. Id. Here, no such affidavit has been provided and/or submitted to this court to justify Plaintiff's requests to proceed anonymously. Good cause must also be shown in order to proceed anonymously. Good cause for a protective order, which Plaintiffs have not filed here, is established upon a showing that disclosure will work a clearly defined and serious injury to the party seeking closure; the injury

Doe 101 v. Epstein
Page 7

must be shown with specificity. See Doe v. Evans, 202 F.R.D. 173, 176 (E.D. P.A. 2001). Thus, Plaintiffs have not met their burden of persuasion. Id. Plaintiffs fail to show good cause in that they have not clearly defined what injury they will sustain if not permitted to proceed anonymously; they have only offered speculation. Such a failure is fatal to their request to proceed anonymously. See infra.

6. In Kolko, a case cited by the Defendants, the court specifically found that proceeding anonymously (i.e., in the style of the case only) would not inhibit discovery. Here, preventing Epstein from identifying Plaintiffs' in subpoenas and other type discovery overwhelmingly inhibits discovery. See Doe v. Evans, 202 F.R.D. at 176 (E.D. P.A. 2001) (denying protective order where alleged sexual assault victim did not demonstrate a serious specific injury and allowing Defendants to identify Plaintiff in discovery because holding otherwise would "chill defendants ability to conduct discovery"). Plaintiffs obviously cannot cite one case preventing open and broad discovery or preventing the identification of Plaintiffs in third-party subpoenas or in other discovery. While Plaintiffs cite to each of above cases, it is misleading for Plaintiffs to suggest the case did not allow for the service of third party subpoenas with the correct names.

7. Next, Plaintiffs' cite a host of criminal cases and statutes which this court has an obligation to distinguish when attempting to巧妙地 apply same in the civil context. For instance, while Fla. Stat. §794.024 and §794.026 appear to prevent the disclosure of the identity of a sexual assault victim, Fla. Stat. §794.024 only applies to public employees (and to investigations and state prosecutions related to claims of rape) and §794.026 only applies if disclosure is being done "with a reckless disregard for the highly offensive nature of the

Doe 101 v. Epstein

Page 8

publication.” Rather, disclosure is being requested in order to properly litigate and defend this matter. Further, §794.026 does not (emphasis added) prevent the disclosure of the name of a sexual assault victim - it only allows for civil remedy as a result thereof assuming one meets the criteria to recover (i.e., disclosure with a reckless disregard for the highly offensive nature of the publication). Again, Epstein agreed to enter into a confidentiality agreement and, if required by this court, to redact full names from any document filed with the Court.

8. Next, the language of Fla. Stat. §92.56 makes it clear that the statute only applies criminal proceedings brought by the State of Florida, not civil proceedings. As set forth by the Office of Attorney General, Fla. Stat. §92.56 and Fla. Stat. §794.024 “were created by the Crime Victims Protection Act.” See 2003 WL 22971082 (Fla. A.G.). Even though Fla. Stat. §92.56 only applies to criminal proceedings, subsection (2) thereof allows for the accused to apply for an order of disclosure to prepare a defense in a criminal proceeding.

9. In addition, Plaintiffs cite to Fed.R.Evid. 412. The Advisory Committee Notes to Rule 412, Fed.R.Evid, makes clear that the procedures to determine admissibility of an alleged victim’s/plaintiff’s sexual conduct or activity in civil cases does not apply to discovery of such information. Rather, discoverability of such information is governed by Rule 26, Fed.R.Civ.P., pursuant to which the scope of discovery is broad. Rule 412, entitled “Sex Offense Cases; Relevance of Alleged Victim’s Past Sexual Behavior or Alleged Sexual Predisposition,” provides in relevant part -

(a) Evidence generally inadmissible.--The following evidence is not admissible in any civil ... proceeding involving alleged sexual misconduct except as provided in subdivisions (b) and (c):

(1) Evidence offered to prove that any alleged victim engaged in other sexual behavior.

Doe 101 v. Epstein
Page 9

(2) Evidence offered to prove any alleged victim's sexual predisposition.

(b) Exceptions.—

* * * *

(2) In a civil case, evidence offered to prove the sexual behavior or sexual predisposition of any alleged victim is admissible if it is otherwise admissible under these rules and its probative value substantially outweighs the danger of harm to any victim and of unfair prejudice to any party. Evidence of an alleged victim's reputation is admissible only if it has been placed in controversy by the alleged victim.

(c) **Procedure to determine admissibility.**--

(1) A party intending to offer evidence under subdivision (b) must—

(A) file a written motion at least 14 days before trial specifically describing the evidence and stating the purpose for which it is offered unless the court, for good cause requires a different time for filing or permits filing during trial; and

(B) serve the motion on all parties and notify the alleged victim or, when appropriate, the alleged victim's guardian or representative.

(2) Before admitting evidence under this rule the court must conduct a hearing in camera and afford the victim and parties a right to attend and be heard. The motion, related papers, and the record of the hearing must be sealed and remain under seal unless the court orders otherwise.

In confirming that Rule 412 does not control the discoverability of such information, the Advisory Committee Notes (1994 Amendments) state -

The procedures set forth in subdivision (c) do not apply to discovery of a victim's past sexual conduct or predisposition in civil cases, which will be continued to be governed by Fed. R. Civ. P. 26. In order not to undermine the rationale of Rule 412, however, courts should enter appropriate orders pursuant to Fed. R. Civ. P. 26 (c) to protect the victim against unwarranted inquiries and to ensure confidentiality. Courts should presumptively issue protective orders barring discovery unless **the party seeking discovery makes a showing that the evidence sought to be discovered would be relevant under the facts and theories of the particular case, and cannot be obtained except through discovery.** In an action for sexual harassment, for instance, while some evidence of the alleged victim's sexual behavior and/or predisposition in the workplace may perhaps be relevant, non-work place conduct will

Doe 101 v. Epstein
Page 10

usually be irrelevant. *Cf. Burns v. McGregor Electronic Industries, Inc.*, 989 F.2d 959, 962-63 (8th Cir. 1993) (posing for a nude magazine outside work hours is irrelevant to issue of unwelcomeness of sexual advances at work). **Confidentiality orders should be presumptively granted as well.**

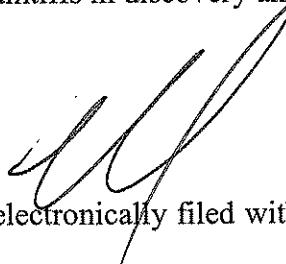
(Emphasis added).

In accordance with Rule 412 and Rule 26, Epstein seeks discovery of Plaintiffs' physical, emotional and psychological history. We are not at the admissibility phase, which Rule 412 addresses. We are at the discovery phase, and identification of the Plaintiffs is required in order to properly litigate and defend the claims against Epstein. Defendant has no other means of obtaining any information about the Plaintiffs' without being permitted to identify Plaintiffs in third party subpoenas and in discovery. Counsel for C.M.A. recognized this conundrum and agreed to identifying C.M.A. and other attorneys in the state court cases and in one of the federal matters have agreed to serve subpoenas with full indentifying information as long as the documents do not disclose the name in the court file. See Exhibit "A".

WHEREFORE, Defendant, Mr. Epstein, requests this court allow it to identify Plaintiffs in the style of this case and that Defendant be permitted to identify Plaintiffs in discovery and for such other and further relief as this court deems just and proper.

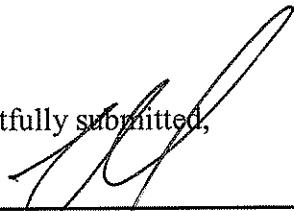
Certificate of Service

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 9 day of June, 2009.



Doe 101 v. Epstein
Page 11

Respectfully submitted,

By: 
ROBERT D. CRITTON, JR., ESQ.

Florida Bar No. 224162

rcrit@bclclaw.com

MICHAEL J. PIKE, ESQ.

Florida Bar #617296

mpike@bclclaw.com

BURMAN, CRITTON, LUTTIER & COLEMAN

515 N. Flagler Drive, Suite 400

West Palm Beach, FL 33401

561/842-2820 Phone

561/515-3148 Fax

(Counsel for Defendant Jeffrey Epstein)

Doe 101 v. Epstein
Page 12

**Certificate of Service
Jane Doe No. 2 v. Jeffrey Epstein
Case No. 08-CV-80119-MARRA/JOHNSON**

Stuart S. Mermelstein, Esq.
Adam D. Horowitz, Esq.
Mermelstein & Horowitz, P.A.
18205 Biscayne Boulevard
Suite 2218
Miami, FL 33160
305-931-2200
Fax: 305-931-0877
ssm@sexabuseattorney.com
ahorowitz@sexabuseattorney.com
*Counsel for Plaintiffs in Related Cases Nos.
08-80069, 08-80119, 08-80232, 08-80380, 08-
80381, 08-80993, 08-80994*

Richard Horace Willits, Esq.
Richard H. Willits, P.A.
2290 10th Avenue North
Suite 404
Lake Worth, FL 33461
561-582-7600
Fax: 561-588-8819
*Counsel for Plaintiff in Related Case No. 08-
80811*
reelrhw@hotmail.com

Jack Scarola, Esq.
Jack P. Hill, Esq.
Searcy Denney Scarola Barnhart & Shipley,
P.A.
2139 Palm Beach Lakes Boulevard
West Palm Beach, FL 33409
561-686-6300
Fax: 561-383-9424
jsx@searcylaw.com
jph@searcylaw.com
Counsel for Plaintiff, C.M.A.

Brad Edwards, Esq.
Rothstein Rosenfeldt Adler
401 East Las Olas Boulevard
Suite 1650
Fort Lauderdale, FL 33301
Phone: 954-522-3456
Fax: 954-527-8663
bedwards@rra-law.com
*Counsel for Plaintiff in Related Case No. 08-
80893*

Paul G. Cassell, Esq.
Pro Hac Vice
332 South 1400 E, Room 101
Salt Lake City, UT 84112
801-585-5202
801-585-6833 Fax
cassellp@law.utah.edu
Co-counsel for Plaintiff Jane Doe

Isidro M. Garcia, Esq.
Garcia Law Firm, P.A.
224 Datura Street, Suite 900
West Palm Beach, FL 33401
561-832-7732
561-832-7137 F
isidrogarcia@bellsouth.net
*Counsel for Plaintiff in Related Case No. 08-
80469*

Robert C. Josefsberg, Esq.
Katherine W. Ezell, Esq.
Podhurst Orseck, P.A.
25 West Flagler Street, Suite 800
Miami, FL 33130
305 358-2800
Fax: 305 358-2382

Doe 101 v. Epstein
Page 13

Bruce Reinhart, Esq.
Bruce E. Reinhart, P.A.
250 S. Australian Avenue
Suite 1400
West Palm Beach, FL 33401
561-202-6360
Fax: 561-828-0983
ecf@brucereinhartlaw.com

Counsel for Defendant Sarah Kellen

Theodore J. Leopold, Esq.
Spencer T. Kuvin, Esq.
Ricci-Leopold, P.A.
2925 PGA Blvd., Suite 200
Palm Beach Gardens, FL 33410
561-684-6500
Fax: 561-515-2610
Counsel for Plaintiff in Related Case No. 08-08804

skuvin@riccilaw.com
tleopold@riccilaw.com

rjosefsberg@podhurst.com
kezell@podhurst.com
Counsel for Plaintiffs in Related Cases Nos. 09-80591 and 09-80656

Jack Alan Goldberger, Esq.
Atterbury Goldberger & Weiss, P.A.
250 Australian Avenue South
Suite 1400
West Palm Beach, FL 33401-5012
561-659-8300
Fax: 561-835-8691
jagesq@bellsouth.net

Counsel for Defendant Jeffrey Epstein