

February 6, 2020

By ECF

Hon. Debra Freeman  
U.S. District Court for the Southern District of New York  
Daniel Patrick Moynihan  
United States Courthouse  
500 Pearl St.  
New York, NY 10007-1312

Re: *Jane Doe 15 v. Indyke et al.*, 19-cv-10653 (PAE)(DCF)  
*Mary Doe v. Indyke et al.*, 19-cv-10758 (PAE)(DCF)  
*Davies v. Indyke et al.*, 19-cv-10788 (GHW)(DCF)

Your Honor:

We represent the plaintiffs in the three above-referenced cases. As directed in Your Honor's Order dated January 14, 2020, we write jointly with counsel for Defendants Darren K. Indyke and Richard D. Kahn, Co-Executors of the Estate of Jeffrey E. Epstein (the "Co-Executors"), to provide a proposed discovery schedule for these cases. The area where the parties have not reached agreement is indicated in italics, and each side's position is set forth below.

1. Initial disclosures under Rule 26(a)(1) were exchanged on January 23, 2020.
2. Plaintiffs will provide HIPAA-compliant medical records release authorizations to Defendants no later than 14 days from Defendants' request, provided such date is not earlier than February 28, 2020.
3. The parties shall serve initial document requests and interrogatories by 30 days from the Court's entry of the discovery schedule. Plaintiffs served Defendants with their initial document requests and interrogatories but the parties have agreed that Defendants have until February 28, 2020 to respond thereto.
4. Any motion for joinder of other parties or amendment of the pleadings shall be made by 30 days from the Court's entry of the discovery schedule.



## *5. Deadlines for fact and expert discovery*

### **Plaintiffs' Position**

Plaintiffs' position is that the default timelines set forth in both Judge Engelmayer's and Judge Woods's Civil Case Management Plan and Scheduling Orders should be used, which provide for:

- Fact discovery to be completed 120 days after the Court's entry of the discovery schedule
- Expert disclosures to be made by the fact discovery deadline
- Rebuttal expert disclosures to be made 14 days after expert disclosures
- Expert discovery to be completed 45 days after the close of fact discovery

Both Judge Engelmayer's and Judge Woods's Civil Case Management Plan and Scheduling Orders indicate that those timelines be used unless the case presents "unique complexities or exceptional circumstances." Plaintiffs have few documents in their possession, and expect that these cases will not involve an unusual number of depositions. Plaintiffs do not believe that the fact that the Co-Executors are defendants in multiple lawsuits makes the discovery process in these lawsuits more complex or time-consuming. To the contrary, the fact that multiple lawsuits have been filed (including prior to these actions) suggests that the Co-Executors should have been working to identify and locate responsive documents many months ago.

### **Co-Executors' Position**

The Co-Executors' position is that the parties should adopt a compromise schedule. The Co-Executors disagree that the cases Plaintiffs filed do not present "unique complexities or exceptional circumstances." Among other things, there are more than twenty cases pending in various jurisdictions against the Co-Executors concerning various time frames, parties, non-parties and alleged conduct. Also, the Defendants are the Co-Executors of a large Estate, not an individual alleged tortfeasor. As a result, discovery in these matters requires more flexibility than typical lawsuits.

Separately, it does not make sense to require that the parties' expert disclosures coincide with completion of fact discovery. The experts should have at least 30 days from the close of fact discovery to proffer initial reports. Nor is it reasonable for experts to proffer rebuttal reports a mere 14 days after receiving initial reports from each other. Thirty days is more appropriate.

The original dates the Co-Executors proposed and which Plaintiff rejected, as well as the Co-Executors' compromise proposals, which Plaintiff also rejected, are as follows:

- Completion of fact discovery: 160 days from the Court's entry of the discovery schedule. (Compromise proposal: 140 days.)



- Expert disclosures and completion of expert discovery: 240 days from the Court's entry of the discovery schedule. (Compromise proposal: 200 days.)
  - Expert reports due 30 days from the close of fact discovery; and rebuttal reports due 30 days thereafter.
- 6. The subjects on which discovery may be needed, when discovery should be completed, and whether discovery should be conducted in phases or be limited to or focused on particular issues

The general subjects of each action are: (1) Mr. Epstein's alleged abuse of plaintiffs; and (2) the plaintiffs' alleged damages. We see no reason to stage discovery.

- 7. Any issues about disclosure, discovery, or preservation of electronically stored information, including the form or forms in which it should be produced

The parties will confer about an ESI protocol.

- 8. Any issues about claims of privilege or of protection as trial-preparation materials, including—if the parties agree on a procedure to assert these claims after production—whether to ask the court to include their agreement in an order under Federal Rule of Evidence 502

The parties are conferring about confidentiality orders in these cases, and expect to submit proposed orders to the Court soon, which will include a standard clawback provision regarding privileged materials.

- 9. What changes should be made in the limitations on discovery imposed under these rules or by local rule, and what other limitations should be imposed

The parties have no proposed changes at this time.

- 10. Any other orders that the court should issue under Rule 26(c) or under Rule 16(b) and (c)

The parties have no proposed orders at this time other than the protective orders mentioned above.

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Finally, with respect to *Davies v. Indyke et al.*, 19-cv-10788 (GHW)(DCF), in the Memo Endorsement dated January 28, 2020 (ECF 19), Your Honor directed the parties to submit an update addressing the status of settlement discussions before the Court sets a briefing scheduling for Defendants' proposed motion to dismiss. Plaintiff remains open to the possibility of participating in the



proposed voluntary compensation program if and when such program is approved, but it has not yet been approved. The parties have not yet had substantive settlement discussions.

We appreciate Your Honor's attention to these matters.

Very truly yours,

/s/ Mariann Meier Wang

Mariann Meier Wang

cc: Counsel for Defendants, by ECF