

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

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

JANE DOE NO. 3,

Plaintiff,

vs.

JEFFREY EPSTEIN,

Defendant.

Related Cases:

08-80232, 08-80380, 08-80381, 08-80994,
08-80993, 08-80811, 08-80893, 09-80469,
09-80591, 09-80656, 09-80802, 09-81092,

**PLAINTIFF JANE DOE NO. 3's MOTION FOR
SANCTIONS, MOTION FOR PROTECTIVE ORDER,
AND INCORPORATED MEMORANDUM OF LAW**

Plaintiff, Jane Doe No. 3, by and through undersigned counsel, hereby files this Motion for Sanctions, Motion for Protective Order, and Incorporated Memorandum of Law, and states as follows:

1. Plaintiffs in these cases have previously brought to this Court's attention Jeffrey Epstein's pattern of intimidating and harassing his victims, as well as the Plaintiffs' fear of Jeffrey Epstein. See, e.g., Plaintiffs Jane Doe No. 101 and Jane Doe No. 102's Motion for No-Contact Order (D.E. 113); Plaintiffs Jane Does 2-7's Response to Defendant's Motion to Compel and/or Identify Plaintiffs in the Style of this Case (D.E. 144); Plaintiffs Jane Does' 2-7 Motion for Protective Order and Incorporated Memorandum of Law (D.E. 223); Plaintiffs Jane Doe Nos. 2-8's Motion for Protective Order as to Jeffrey Epstein's Attendance at Deposition of

Plaintiffs, and Incorporated Memorandum of Law (D.E. 292); Affidavit of Dr. Kliman (D.E. 223, Exh. A); Jane Doe No. 4's Motion for Sanctions and Motion for Protective Order (D.E. 306); Order, dated October 23, 2009 (D.E. 369) (forbidding Epstein from attending Jane Doe No. 4's deposition); Omnibus Order (forbidding Epstein's attorneys from repetitive and abusive questioning during Plaintiffs' depositions) (D.E. 433).

2. Jane Doe No. 4 previously brought to this Court's attention that Epstein attended her deposition in violation of this Court's No-Contact Order (D.E. 238), a nearly identical No-Contact Order entered by the Court in Epstein's criminal prosecution, and a stipulation between the parties that Epstein would not appear at her deposition.

3. Yet again, on November 24, 2009, Defendant Epstein flagrantly violated *multiple* Orders of this Court when he deliberately presented himself at the location of Jane Doe No. 3's medical examination pursuant to Fed.R.Civ.P. 35 (the "IME"). At that time, he terrorized Jane Doe No. 3 by crossing paths with her in a place and at a time when he must have known that his presence was forbidden by Court Order.

4. Epstein's counsel served the Notice of Jane Doe No. 3's IME on October 30, 2009. The Notice included the date and location of Jane Doe No. 3's IME, 250 S. Australian Avenue, West Palm Beach. The Notice stated that the IME would start at 9 am and last until approximately 5:30 p.m. A Court Order required the Plaintiff to submit to eight hours of evaluation. Jane Doe No. 3 was the fifth plaintiff to undergo her IME. All of the previous IMEs lasted until later than 6:15 p.m. Therefore, Epstein and his counsel knew where Jane Doe No. 3 would be on November 24, 2009, and that she would be there between 9:00 am and sometime around 6:15 p.m. Epstein, therefore, must have known that there was a fair chance he would

encounter Jane Doe No. 3 on November 24, 2009, at the address where his attorney had scheduled the IME.

5. On November 5, 2009, this Court entered a Joint Agreed Order, which stated that “Defendant Jeffrey Epstein will not attend the IMEs *or make himself seen by Plaintiffs on the date of their IMEs.*” (D.E. 401) (emphasis added). It was Epstein’s responsibility to ensure his compliance with this Order. The Order further provided that the IMEs of Jane Doe Nos. 2-8 would take place at a “mutually agreeable location,” and not at the office of Epstein’s counsel.

6. Pursuant to the November 5, 2009 Order, Jane Doe No. 3 appeared at her IME. During a brief recess in the IME, Jane Doe No. 3 and her attorney were outside the office building where the IME was taking place, 250 S. Australian Ave., West Palm Beach.¹ As in the other Plaintiffs’ IMEs that took place over a two-week period, Jane Doe No. 3 took a short break approximately every two hours when it was time to change the videotape in the camera recording the IME.² It was during the last break of the day that Defendant Epstein crossed paths with Jane Doe No. 3, in violation of multiple Court Orders.

7. While Jane Doe No. 3 and her counsel, Jessica Arbour, were sitting on a bench just outside the foyer of the office building, Defendant Epstein exited the building. When he encountered Jane Doe No. 3 and her attorney, he made no attempt to stop, change his direction, or return to the building without Jane Doe No. 3 seeing him, despite having ample opportunity to avoid them. See Affidavit of Jessica Arbour, attached as Exhibit “A”.

¹ This is the same building where Defendant Epstein crossed paths with Jane Doe No. 4 on the date of her deposition. (See D.E. 306).

² At the beginning of each IME, the Defendant’s expert advised all of the Plaintiffs, including Jane Doe No. 3, that she was allowed to take “smoke breaks” any time she would like.

8. Epstein crossed in front of Jane Doe No. 3, approximately 5-7 feet from her. Jane Doe No. 3 immediately reacted in a terrified, emotional manner that included screaming and crying. Her attorney physically removed her from Defendant Epstein's vicinity and into the safety of the building's lobby. Jane Doe No. 3's reaction was so emotional that the security guard on duty and several onlookers appeared quite concerned. (See Exh. "A" ¶¶ 7-11).

9. Epstein does not dispute that he encountered Jane Doe No. 3 and her attorney. See Exhibit B. He does not dispute that he recognized them.

10. Jane Doe No. 3 was eventually calmed enough to be taken back to the office where her IME was being conducted, but was too distraught to continue her IME. At that point, Jane Doe No. 3's counsel terminated the IME.

11. At no time were Plaintiff or her counsel made aware that Defendant Epstein would be in the building when any of the Plaintiffs would be present for their IMEs. Indeed, Plaintiffs reasonably expected that this Court's prior orders and the threat of sanctions would be a sufficient deterrent to keep Epstein away.

12. Defendant Epstein's ostensible full-time employer, the Florida Science Foundation, is no longer located in the building where the IMEs took place. The company was administratively dissolved several months ago, approximately the same time that his court-ordered work-release program with the foundation ended. As a result, it would appear that Epstein had no legitimate purpose in the building at 250 S. Australian Ave. on November 24, 2009. Indeed, he was dressed in an oversized sweatsuit that would not be appropriate for any professional environment. (Arbour Aff., Exh. "A", ¶14). The reason for his presence in the building has never been explained to Jane Doe No. 3's counsel.

13. In addition to violating the Agreed Order (D.E. 401), Epstein's conduct recklessly or intentionally violated (i) this Court's No-Contact Order dated July 31, 2009 (D.E. 238), in which he was specifically instructed to have no "direct or indirect contact" with Jane Doe No. 3 or any other plaintiff; and (2) the July 31, 2008, no-contact Order entered by the Court in his criminal matter arising from the sexual assaults of numerous underage girls, including Jane Doe No. 3. The July 31, 2009 Order mirrored the June 30, 2008 criminal sentence entered by Palm Beach Circuit Court Judge Deborah Dale Pucillio, wherein she instructed Jeffrey Epstein that he shall have "no direct or indirect contact" with the Plaintiffs. (D.E. 238).

14. Jane Doe No. 3 agrees to attend the remaining two hours of her IME in order to comply fully with this Court's Order on the IME length. However, a protective order specifically barring the continuation of the IME from occurring anywhere not previously agreed upon by Plaintiff's counsel is necessary to ensure that Defendant Epstein will not be given another opportunity to traumatize Jane Doe No. 3. Given the violation of the prior Orders as well as a prior similar incident at the deposition of Jane Doe No. 4, a more drastic measure is now necessary to protect Jane Doe No. 3 from Epstein.

15. Furthermore, Jane Doe No. 3 seeks sanctions against Defendant Epstein for the violation of not one, but *three court orders* designed to protect Plaintiffs from the exact conduct in which Defendant Epstein engaged. This Court has authority to sanction a party for civil contempt for violating the terms of a court order. See Sizzler Family Steak Houses v. Western Sizzlin Steak House, Inc., 793 F.2d 1529, 1534-35 (11th Cir. 1986) (attorneys' fees may be awarded for civil contempt in failure to comply with court order). Additionally, sanctions for violation of multiple court orders are an appropriate exercise of judicial oversight.

16. Given Jeffrey Epstein's violation of this Court's No-Contact Order and the Agreed Order, appropriate sanctions and other relief are necessary to compensate Plaintiff Jane Doe No. 3.

17. Prior to filing this Motion, Plaintiff's counsel conferred with Jeffrey Epstein's counsel in an attempt to reach an agreement as to the relief requested. No agreement was reached.

WHEREFORE, Plaintiff, Jane Doe No. 3, respectfully requests (1) an award of sanctions, including attorneys' fees and costs reasonably and necessarily incurred by Plaintiff due to Defendant Jeffrey Epstein's violation of the Court's No-Contact Order (D.E. 238) and Agreed Order (D.E. 401); (2) an Order requiring that the remaining two hours of Jane Doe No. 3's IME take place at a mutually agreeable location in a city other than West Palm Beach, with Defendant Epstein responsible for all costs above and beyond those originally contemplated by this Court in its Nov. 5 Order; and (3) all other relief as this Court deems just and appropriate.

CERTIFICATE OF COMPLIANCE WITH LOCAL RULE 7.1.A.3

Undersigned counsel has conferred with Defendant's counsel in a good faith effort to resolve the issues raised in this motion, and has been unable to do so.

Dated: January 4, 2010

Respectfully submitted,

By: s/ Adam D. Horowitz
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 Plaintiffs
18205 Biscayne Blvd., Suite 2218
Miami, Florida 33160
Tel: (305) 931-2200
Fax: (305) 931-0877

CERTIFICATE OF SERVICE

I hereby certify that on January 4, 2010, 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/ Adam D. Horowitz

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

Bradley James Edwards
brad@pathtojustice.com

Isidro Manuel Garcia
isidrogarcia@bellsouth.net

Jack Patrick Hill
jph@searcylaw.com

Katherine Warthen Ezell
KEzell@podhurst.com

Michael James Pike
MPike@bclclaw.com

Paul G. Cassell
cassellp@law.utah.edu

Richard Horace Willits
lawyerwillits@aol.com

Robert C. Josefsberg
rjosefsberg@podhurst.com