

EXHIBIT 2

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May 19, 2020

VIA ELECTRONIC MAIL

Roberta Kaplan, Esq.
Kaplan Heckler & Fink, LLP
350 Fifth Ave., Suite 7110
New York, NY 10118

Re: *Jane Doe v. Darren K. Indyke and Richard D. Kahn in their capacities as the executors of the Estate of Jefferey E. Epstein*, Case No. 1:19-cv-08673(KPF)(DCF)

Dear Roberta:

We write in response to your May 12, 2020 letter regarding our meet and confer conference on May 4, 2020, which you did not attend, concerning Plaintiff's and the Co-Executors' First Interrogatories and Requests for Production and the parties' respective Responses and Objections thereto.

As a threshold matter and as discussed during the meet and confer, the Co-Executors plan to supplement their discovery responses and will do so this week. Accordingly, there is no justification for your seeking court intervention on any matters related to the Co-Executors' discovery responses. We further address the points you raise in your letter below.

I. Co-Executors' Responses to Plaintiff's Interrogatories and Requests for Production

A. General Obligations

There must have been a misunderstanding during the meet and confer conference. We do not believe, as you suggest in your letter, that it is "sufficient for Defendants to respond to Plaintiff's Requests by simply relying on the Executors' own personal knowledge." On the contrary, and as you are aware, we do not represent the Co-Executors in their personal capacities. Nor were the discovery requests directed towards the Co-Executors in their individual capacities.

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The cases you cite on this point are inapplicable in any event. First, none of your cases were decided after the 2015 amendments to the Federal Rules of Civil Procedure, which emphasize the pre-existing but often-unheeded requirement that all civil discovery be proportional to the needs of the case. See *State Farm Mut. Auto. Ins. Co. v. Fayda*, No. 14CIV9792WHPJCF, 2015 WL 7871037, at *2 (S.D.N.Y. Dec. 3, 2015) (“[T]he amended rule is intended to encourage judges to be more aggressive in identifying and discouraging discovery overuse; by emphasizing the need to analyze proportionality before ordering production of relevant information.”).

Second, your cases do not stand for much more than the proposition that a party needs to use reasonable methods to obtain information—a notion with which the Co-Executors do not disagree. For example, *Siegel* (a case from 1951) held that the defendant must produce information within her attorneys’ possession, custody, and control, but also that plaintiff was not required to answer responses regarding what other individuals knew or said. *Siegel v. Yates*, 11 F.R.D 129, 130-31 (S.D.N.Y. 1951). Such questions were more appropriately asked in depositions of those individuals. *Id.* at 131. In *Siegel*, it was sufficient that plaintiff “furnish the names and addresses, known to her attorney, of any persons who ha[d] knowledge of the subjects encompassed within the interrogatories.” *Id.*

Additionally, in *Tyler v. Suffolk Cty.*, 256 F.R.D. 34, 38 (D. Mass. 2009), which you also cite, the court held that defendants who were sued in their official capacities as sheriff and superintendent of a correctional facility (notably, not as executors) were required to respond to discovery questions “using all **reasonably obtainable** information within their possession, custody or control, including records maintained by [the correctional facility].” *Id.* (emphasis added). The Co-Executors do not disagree. Indeed, as represented during the meet and confer conference, the Co-Executors are in the process of searching **over 730,000 documents** in their possession, custody, and control.

As stated on the meet and confer call, the Co-Executors are using all reasonable methods, proportional to the needs of the case, to search for and identify potentially responsive materials and information.

B. Plaintiff’s Interrogatory Nos. 1, 2, 3, 4, 6, 7 & 8¹

As stated above, the Co-Executors plan to supplement their responses this week. We suggest that you review those supplemental responses and if, upon such review, you want to further discuss the Co-Executors’ responses, please let us know. We would view any motion practice without such a discussion as contrary to the Court’s meet and confer requirements.

¹ To the extent Plaintiff attempts to describe or summarize any specific Interrogatory or Document Request, we defer to the actual Interrogatories and Document Requests, which speak for themselves, and the Co-Executors’ written responses thereto.

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C. Plaintiff's Interrogatory No. 5

We agree with your characterization that Plaintiff agreed to consider narrowing or otherwise revising this Interrogatory. We will wait for Plaintiff to narrow Interrogatory No. 5.

D. Plaintiff's Interrogatory No. 14

This Interrogatory seeks documents relating to "Minor Victim 1." As you know, we have already conducted a search for this term. We searched specifically for:

- "Minor Victim #1";
- "Minor Victim No. One"; and
- "Minor Victim Number One."

We returned no hits on any of these variations, per the hit report we sent you on May 7, 2020.

II. The Co-Executors' Responses to Plaintiff's Interrogatories and Requests for Production

A. The Co-Executors' Interrogatory No. 2

The parties agree they are at an impasse on Plaintiff's failure to sufficiently disclose her alleged damages.

B. The Co-Executors' Interrogatory Nos. 4 & 13

Plaintiff has confirmed she has provided all information available to her at this time but will supplement her responses to these Interrogatories should she uncover additional information.

C. The Co-Executors' Interrogatory Nos. 5-8

Plaintiff asserts these are contention interrogatories. We disagree.

In the case you cite in support of your assertion, *Pasternak v. Dow Kim*, No. 10 CIV. 5045 LTS JLC, 2011 WL 4552389, at *3 (S.D.N.Y. Sept. 28, 2011), the court held that "contention interrogatories, unlike other types of discovery, are not designed to reveal new information to the opposing side. Rather, they are 'designed to assist parties in narrowing and clarifying the disputed issues' in advance of summary judgment practice or trial." However, unlike in *Pasternak*, here, we **do** seek information designed to reveal new information and not to necessarily narrow the disputes.

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Plaintiff's Complaint alleges numerous encounters with Mr. Epstein that are not described or identified in any way. (e.g., "Doe returned to Epstein's home again and again."; "After several visits..."; "In subsequent visits..."; "On other occasions..." Compl. ¶¶ 34-39.) The Co-Executors have a right to know every incident or occasion on which Mr. Epstein breached a duty to Plaintiff, committed a tort, or violated Penal Law § 130. These Interrogatories seek information that is readily knowable to Plaintiff and her attorneys but not to the Co-Executors. Accordingly, we are at an impasse.

D. The Co-Executors' Interrogatory Nos. 10, 11 & 12 and Request Nos. 13 & 14

Plaintiff's letter represents that she will "provide information relating to conditions, treatments, or services **relevant to the claims and defenses in this action**," including "information relating to any condition, treatment, or service that concerns the same or similar conditions as those she alleges were caused by Epstein's conduct." (Emphasis in original.) This is insufficient. As we stated during the meet and confer conference, Plaintiff does not get to be the arbiter of what is "relevant" to the claims and defenses in this matter, nor what is "similar" to the conditions she alleges Mr. Epstein caused.

This information is critical. Unless Plaintiff immediately agrees to provide all requested information, we will seek the Court's assistance to compel her to do so.

E. The Co-Executors' Request Nos. 1 & 3

Plaintiff's letter represents that "to the extent these requests call for communications that relate to Epstein or this litigation and that are solely in the custody of Plaintiff's attorneys, these requests are overly broad and unduly burdensome in light of the fact that the overwhelming majority of such documents will be protected by attorney-client privilege and/or the work product doctrine." However, you have provided no details to support these claims. Therefore, these assertions are unconvincing.

Moreover, communication between you and your colleagues, on the one hand, and counsel to plaintiffs in other lawsuits arising from entirely separate claims of abuse allegedly committed by Mr. Epstein, on the other hand, are not privileged.

Your assertion of a "common interest" privilege is dubious. To obtain protection under the common interest doctrine, a party must show "(1) it shares a common legal interest with the party with whom the information was shared and (2) the statement for which protection is sought must have been designed to further that interest." *Schultz v. Milhorat*, No. 10 Civ. 103, 2011 WL 13305347, at *3 (E.D.N.Y. Apr. 11, 2011). You have not even attempted to articulate a legitimate interest you share with other Plaintiffs' counsel or, more importantly, how your communications with them furthered that interest. Your suggestion that all of your communications with other Plaintiffs' counsel necessarily satisfy these criteria is unsupported.

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Barring a prompt, sufficient explanation of the “common interest” privilege you have asserted, we will seek the Court’s assistance to obtain these communications.

With respect to communications between Plaintiff’s counsel and journalists concerning Plaintiff’s specific allegations, your letter insists that “to the best of their knowledge, Plaintiff and/or her counsel have not communicated with journalists about her specific allegations.” This response is deficient for at least two reasons. First, it is unclear what “to the best of their knowledge” means. Please clarify the reason you qualified your statement in this regard.

Second, Plaintiff has improperly narrowed the scope of the Co-Executors’ Requests. The Requests do not ask merely for communications related to Plaintiff’s “specific allegations.” Rather, Request No. 1 requests documents and communications “with or otherwise concerning Decedent [*i.e.*, Mr. Epstein]” and Request No. 3 requests “documents and communications concerning this litigation.” You have been interviewed by the media about Mr. Epstein, his estate, and even this lawsuit (for example, by Arielle Levy in the Broken podcast). Please immediately amend Plaintiff’s response to this Request to include all documents or communications concerning Mr. Epstein or this litigation. Otherwise, we will seek the Court’s assistance to obtain these materials, too.

F. The Co-Executors’ Request No. 4

Plaintiff’s letter represents that “Plaintiff agreed to provide a copy of her birth certificate.” Please let us know when you will be producing Plaintiff’s birth certificate.

G. The Co-Executors’ Request No. 10

Plaintiff’s letter represents that “Plaintiff agreed to provide academic records for middle school and high school, if any.” Please let us know when you will be producing those records.

As explained above, the Co-Executors plan to supplement their responses this week. Please let us know if you need to confer on any further discovery issues after you have had a chance to review those responses.

Sincerely,

/s/ Bennet J. Moskowitz

Bennet J. Moskowitz