

EXHIBIT 4

KAPLAN HECKER & FINK LLP

350 FIFTH AVENUE | SUITE 7110
NEW YORK, NEW YORK 10118
TEL (212) 763-0883 | FAX (212) 564-0883
WWW.KAPLANHECKER.COM

DIRECT DIAL 212.763.0884
DIRECT EMAIL rkaplan@kaplanhecker.com

May 12, 2020

BY EMAIL

Bennet J. Moskowitz
Troutman Sanders LLP
875 Third Avenue
New York, New York 10022

Re: Doe v. Indyke et al., No. 19-cv-8673 (S.D.N.Y.) (KPF) (DCF)

Dear Bennet:

We write following our meet and confer on May 4, 2020 (the “May 4 Meet and Confer”) regarding Plaintiff’s and Defendants’ First Interrogatories and Requests for Production (respectively, “Plaintiff’s Requests” and “Defendants’ Requests”) and the parties’ respective Responses and Objections thereto. This letter summarizes the agreements we reached during the May 4 Meet and Confer, as well as Plaintiff’s position on the areas of dispute that remain.

I. Defendants’ Responses to Plaintiff’s Interrogatories and Requests for Production

As we noted during the May 4 Meet and Confer, we are dismayed that Defendants failed to answer *any* of Plaintiff’s Interrogatories. At this stage of the litigation—and particularly when Plaintiff’s allegations relate to criminal activity that has been the focus of investigation and litigation for more than a decade—Defendants’ refusal to provide straightforward, clearly discoverable information, such as Jeffrey Epstein’s email addresses, appeared to be nothing more than a continued effort at obstruction and delay. We therefore appreciate your agreement to supplement many of Defendants’ responses to Plaintiff’s Requests, as detailed below. We ask that you do so no later than May 14, 2020.

Defendants’ General Obligation to Conduct a Reasonably Inquiry: As a threshold issue, and as discussed during the May 4 Meet and Confer, because Defendants have been sued in a representative capacity, Defendants are obligated to provide reasonably obtainable information within the Estate’s possession, custody or control. *See Siegel v. Yates*, 11 F.R.D, 129, 130-31 (S.D.N.Y. 1951). It is not sufficient for Defendants to respond to Plaintiff’s Requests by simply relying on the Executors’ own personal knowledge (although we note that, as individuals who were closely associated with Epstein and his affairs during his lifetime, the

Executors likely have personal knowledge well beyond what was reflected in their initial responses to Plaintiff's Requests). Rather, in answering Plaintiff's Requests, the Executors are obligated to consult relevant records and individuals who are subject to the Estate's control and are reasonably accessible to the Estate. *See, e.g., Tyler v. Suffolk Cty.*, 256 F.R.D. 34, 37–38 (D. Mass. 2009); *see also In re Auction Houses Antitrust Litig.*, 196 F.R.D. 444, 445 (S.D.N.Y. 2000). Such individuals may include, for example, past or current attorneys and/or employees of Epstein. *See Chevron Corp. v. Donziger*, 296 F.R.D. 168, 186 (S.D.N.Y. 2013). While we appreciate your invitation to suggest individuals and records that the Estate should consult in responding to Plaintiff's Requests, and will do so wherever possible, Defendants have an independent legal obligation to identify potentially relevant records and individuals, obtain responsive information from those sources, and provide that information to Plaintiff. Please confirm that you have complied or will comply with this obligation, and that you will supplement your answers to Plaintiff's Requests accordingly, if needed.

Plaintiff's Interrogatory Nos. 1, 6 & 7: These interrogatories seek identification of individuals with knowledge of Plaintiff's claims or allegations, Epstein's agents or employees who had contact with Plaintiff, and payments made by Epstein or his agents to Plaintiff. Defendants agreed to supplement either in response to these interrogatories or by providing relevant documents in response to Plaintiff's Requests.

Plaintiff's Interrogatory Nos. 2, 3 & 8: These interrogatories seek identification of Epstein's email accounts and addresses, phone numbers, and personal electronic devices used in connection with the subject matter of this litigation. Defendants agreed to immediately provide Epstein's telephone number(s) and email address(es) for the relevant time period and to provide additional detail regarding electronic devices used by Jeffrey Epstein during forthcoming discussions with Plaintiff about electronically stored information and document discovery.

Plaintiff's Interrogatory No. 4: This interrogatory seeks identification of individuals who worked at Epstein's mansion at 9 East 71st Street, New York, NY between 2001 and 2005. Defendants agreed to consider supplementing their response to this Interrogatory. Please notify us as to whether or not you will supplement by May 14, 2020.

Plaintiff's Interrogatory No. 5: This interrogatory seeks identification of individuals who hired, solicited, sought out, or otherwise contacted women on Epstein's behalf. Plaintiff agreed to consider narrowing or otherwise revising this interrogatory.

Plaintiff's Request for Production No. 14: This request seeks documents relating to "Minor Victim 1" in the indictment issued by the United States Attorney's Office for the Southern District of New York against Epstein in July 2019. Defendants agreed to search for documents and communications relating to "Minor Victim 1" in the indictment issued by the United States Attorney's Office for the Southern District of New York against Epstein in July 2019. Please confirm that any non-privileged documents responsive to this request will be produced to Plaintiff.

I. Plaintiff's Responses to Defendants' Interrogatories and Requests for Production

Defendants' Interrogatory No. 2: This interrogatory seeks computation of the damages Plaintiff seeks in this case. Plaintiff maintains her position that she has supplied all reasonably available information at this time, and agrees to supplement her response as additional information becomes available.

Defendants' Interrogatory Nos. 4 & 13: These interrogatories seek identification of individuals associated with Epstein with whom Plaintiff interacted and identification of anything of value Plaintiff received from Epstein. Plaintiff has provided all information available to her at this time in her Responses and Objections. To the extent that Plaintiff uncovers additional information during discovery, she will supplement her responses accordingly.

Defendants' Interrogatory Nos. 5-8: These interrogatories seek identification of all duties Epstein owed Plaintiff, and each act or omission by Epstein that either breached a duty to Plaintiff, violated New York Penal Law § 130, or constituted a tort. Plaintiff maintains that these interrogatories request information that is more appropriately obtained through other discovery devices, such as document productions and depositions, and, further, that interrogatories of this nature are more reasonably used to narrow remaining issues before trial, not to demand a full catalog of facts and evidence supporting a party's contentions. *See Pasternak v. Dow Kim*, No. 10 Civ. 5045, 2011 WL 4552389, at *3 (S.D.N.Y. Sept. 28, 2011); *see also* ECF No. 49 (permitting interrogatories beyond the scope of those permitted by Local Rule 33(a) only to the extent "reasonable"). Plaintiff remains willing to consider any reasonable efforts by Defendants to narrow or otherwise revise these interrogatories.

Defendants' Interrogatory Nos. 10, 11 & 12 and Request Nos. 13 & 14: These interrogatories and requests seek information about Plaintiffs' entire medical history, without limitation as to time or content. Plaintiff has considered the arguments raised by Defendants during the May 4 Meet and Confer. Plaintiff's position is that she is not obligated to provide Defendants with her entire medical history or related records. *See, e.g., Kunstler v. City of New York*, No. 04 Civ. 1145, 2006 WL 2516625, at *3-4 (S.D.N.Y. Aug. 29, 2006); *Manassis v. New York City Dep't of Transp.*, No. 02 Civ. 359, 2002 WL 31115032, at *2 (S.D.N.Y. Sept. 24, 2002)¹

Plaintiff has agreed to provide information relating to conditions, treatments, or services *relevant to the claims and defenses in this action*. To the extent it alleviates the concerns Defendants expressed during the May 4 Meet and Confer, Plaintiff specifically represents that she interprets this agreement to encompass 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. However, Plaintiff is neither willing nor obligated to provide Defendants

¹ Indeed, the case law cited by Defendants confirms this point. *See Rodriguez v. Folksamerica Reinsurance Co.*, No. 305 Civ. 1687, 2006 WL 1359119, at *3 (D. Conn. May 15, 2006) (plaintiff's attorney required to state that plaintiff never received treatment for "emotional distress," an injury alleged in the complaint); *Arthur v. Atkinson Freight Lines Corp.*, 164 F.R.D. 19, 20-21 (S.D.N.Y. 1995) (plaintiff required to provide all records for physician treating specifically for injuries tied to the underlying incident).

with a complete list of conditions, treatments, or services that she has experienced, as Defendants requested.

Defendants' Request Nos. 1 & 3: As discussed during the May 4 Meet and Confer, to the extent that 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. During the May 4 Meet and Confer, Defendants identified two categories of responsive communications in the custody of Plaintiff's counsel that Defendants believe are not privileged: (i) communications between Plaintiff's counsel and counsel for plaintiffs in similar pending cases against Epstein and (ii) communications between Plaintiff's counsel and journalists concerning Plaintiff's specific allegations.

With regard to the first category, communications between Plaintiff's counsel and counsel to plaintiffs in similar suits against Defendants are, in fact, protected communications. Plaintiff's counsel has communicated with counsel for other plaintiffs only about matters as to which they share a common interest and strategy—chiefly, the proposed victim's compensation program. Accordingly, those communications, which reflect Plaintiff's counsel's mental impressions, conclusions, opinions, or legal theories, are subject to the protection of the work product doctrine, which is not waived by disclosure to a third party, unless the disclosure makes disclosure to an adversary materially more likely. *Favors v. Cuomo*, 285 F.R.D. 187, 200 (E.D.N.Y. 2012); *Thai-Lao Lignite (Thailand) Co. v. Gov't of Lao People's Democratic Republic*, 945 F. Supp. 2d 431, 437 (S.D.N.Y. 2013). In addition, such communications are subject to the protection of the common interest doctrine, which protects the confidentiality of communications between attorneys with common legal interests undertaking a joint effort or strategy. *Fireman's Fund Ins. Co. v. Great Am. Ins. Co. of New York*, 284 F.R.D. 132, 139 (S.D.N.Y. 2012); *Schultz v. Milhorat*, No. 10 Civ. 103, 2011 WL 13305347, at *43 (E.D.N.Y. Apr. 11, 2011) (holding that "communications between plaintiffs in . . . consolidated cases [were] protected by the common interest privilege").

With regard to the second category, as Defendants requested, Plaintiff's counsel can confirm that, to the best of their knowledge, Plaintiff and/or her counsel have not communicated with journalists about her specific allegations.

Accordingly, Plaintiff maintains her objections to these Requests, and will not undertake to review communications that relate to Epstein or this litigation and that are solely in the custody of Plaintiff's attorneys. Plaintiff remains willing to discuss these or any other specific categories of communications that Defendants are seeking through these requests.

Defendants' Request No. 4: Plaintiff agreed to provide a copy of her birth certificate.

Defendants' Request No. 10: Plaintiff agreed to provide academic records for middle school and high school, if any.

KAPLAN HECKER & FINK LLP

5

Please let us know if you would like to confer further about these or any other issues related to discovery. We continue to reserve all rights.

Very truly yours,

A handwritten signature in blue ink, appearing to read 'Roberta', with a stylized flourish extending to the right.

Roberta A. Kaplan