

Michael C. Miller
212 506 3955
mmiller@step toe.com

Step toe
STEP TOE & JOHNSON LLP

1114 Avenue of the Americas
New York, NY 10036
212 506 3900 main
www.step toe.com

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DO. # _____
DATE FILED. 5/24/17

*Discovery is stayed
pending the conference scheduled
for 7/6/17 at 4³⁰ P.M.*

May 22, 2017

VIA ECF

Hon. John G. Koeltl
United States District Court
United States Courthouse
500 Pearl Street
New York, NY 10007-1312

s o ordered.
per G/Koeltl
J.S.D.

Re: **Jane Doe 43 v. Jeffrey Epstein, et al.**
Civil Action No. 17-cv-616

5/24/17

Dear Judge Koeltl:

We are counsel to defendants Jeffrey Epstein and Lesley Groff in the above-referenced matter. We write in response to Plaintiff's May 19, 2017 letter to the Court, in which Plaintiff contends that discovery should proceed now, i.e., before the Plaintiff files her amended complaint and the Court resolves the inevitable motions to dismiss. We respectfully submit that, for the reasons set forth below, the Court should stay discovery pending the resolution of Defendants' motions to dismiss the Plaintiff's amended complaint. We are advised that Defendant Sarah Kellen joins in this request.

Plaintiff's counsel recently advised us that Plaintiff is likely to file an amended complaint and will do so on or before June 5, 2017. Plaintiff arrived at this conclusion after receiving letters on May 15, 2017 from this firm (on behalf of Defendants Epstein and Groff) and counsel for Sarah Kellen, which outlined the many deficiencies in the current complaint that warrant its dismissal ("May 15 Letters"). Pursuant to this Court's May 15, 2017 Stipulation and Order, Defendants will have until June 19, 2017 to move to dismiss the Plaintiff's amended complaint, and briefing will be completed by August 2, 2017.

We respectfully submit that discovery should be stayed until the Court resolves the inevitable motions to dismiss the amended complaint, for the following reasons:

First, and in any event, the Plaintiff has not yet served her amended complaint. It is not possible to properly assess the propriety of any discovery propounded by the Plaintiff until her amended complaint has been served on and reviewed by the Defendants. *Rogen v. Scheer*, 1991

Hon. John G. Koeltl
May 22, 2017
Page 2

Step toe
STEPTOE & JOHNSON LLP

WL 33294 (S.D.N.Y., Feb. 22, 1991) ("before the plaintiff can avail himself of the process of this Court to build his case, he must state an adequate claim on the information in his hands. The stay on discovery is therefore continued until a final amended complaint and answer thereto are filed with this Court"); *American Fed. of Musicians and Employers' Pension Fund v. Atlantic Recording Corp.*, 2016 WL 2641122 (S.D.N.Y., Jan. 8, 2016) (staying discovery pending motion to dismiss amended complaint).

Second, we do not believe that Plaintiff can cure the many defects in her current complaint with an amended complaint. As outlined in the May 15 Letters, the current complaint is fatally deficient because it: (a) fails to state a claim; (b) is barred by the applicable statutes of limitations; (c) fails to allege jurisdiction; and (d) fails to establish that venue is properly laid in the Southern District of New York. We respectfully request that the Court waive its page limitation on letter motions to permit us to provide the Court with a copy of the May 15 Letters.

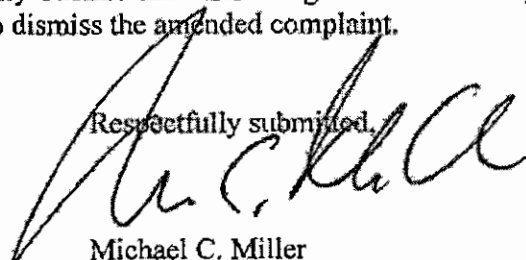
Third, Plaintiff's purported urgent need to press forward with discovery cannot be reconciled with the fact that she waited over ten years to bring this action. There is no need to commence discovery immediately in a case that the Plaintiff has neglected to commence for such a long period of time.

Fourth, while there will be no prejudice to the Plaintiff if discovery in connection with her more than 10-year old claim is stayed by the Court, the Defendants will undoubtedly expend time, energy and resources in responding to discovery demands that may prove to be unjustified and completely irrelevant if the motions to dismiss even an amended complaint by Plaintiff bring the Plaintiff's claims to an appropriate and immediate end.

Lastly, there is a pending action in Florida where Plaintiff's lead counsel, Brad Edwards, is the counter-claim plaintiff against Jeffrey Epstein. Given the pending Florida litigation, the timing of Plaintiff's request to proceed with discovery for this case at this time, before the Court's determination as to whether Plaintiff's has sufficiently stated a claim and whether her claim is time-barred, raises questions as to the purpose and propriety of the request.

For all of the above reasons, we respectfully submit that there is good cause to stay discovery until the Court has resolved the motions to dismiss the amended complaint.

Respectfully submitted,



Michael C. Miller
Counsel for Defendants Jeffrey
Epstein and Lesley Groff