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October 10, 2018

Via CM/ECF

The Honorable Magistrate Judge Sarah Netburn
United States District Court
United States Courthouse
500 Pearl Street
New York, NY 10007

Re: *Jane Doe 43 v. Jeffrey Epstein, et al.*
United States District Court, Southern District of New York
Case No. 17-CV-00616
Letter Motion re Discovery Pre-Hearing Conference (October 12, 2018)

Dear Judge Netburn:

This firm is co-counsel for Defendant Jeffrey Epstein and we are writing this letter pursuant to Local Civil Rule 37.2. On October 4, 2018, Plaintiff filed a letter motion (D.E. 151) asking the Court for a pre-motion discovery conference to discuss the timing and location of Defendant Maxwell's deposition. That matter has been set for a telephonic hearing on **October 12, 2018, at 2:00 p.m.** before United States Magistrate Judge Sarah Netburn (D.E. 155).

An issue has arisen concerning deposition scheduling of *all* parties, and we respectfully request that the Court address those issues at the October 12, 2018, hearing as well. Specifically, while the parties had previously agreed to a deposition schedule, including setting Plaintiff's deposition for November 5, 2018, Plaintiff's counsel has withdrawn the November 5 date and has now taken the position that he will not make Plaintiff available for deposition until *after* the depositions of the four Defendants have been taken. There is nothing in the Federal Rules of Civil Procedure or the Local Rules of this Court that allows a plaintiff to dictate the order of depositions or requires that the Defendants' depositions occur first. *See* Federal Rule of Civil Procedure 26(d)(3). In fact, it is customary in litigation that a plaintiff's deposition be conducted first so that the plaintiff cannot rely on the testimony of the defendants in formulating her positions in the case, mainly when it is a "she said" versus "he said" type litigation. *Also see, e.g., McKenzie Management & Research Co. v. Lee Nat'l Corp.*, 36 A.D.2d 602, 318 N.Y.S.2d 355 (1971) ("It is recognized that normally right of priority of examination is accorded the defendant, in the absence of special circumstances."); *Serio v. Rhulen*, 29 A.D. 3d 1195, 815 N.Y.S.2d 320 (2006)(same); *Klevens Const. Co. v. State*, 87 Misc. 2d 108, 383 N.Y.S.2d 844 (1976) ("The rationale for this rule is that the defendant is presumed blameless until claimant proves otherwise and thus should be accorded the opportunity in the first instance to examine plaintiff to determine what plaintiff's lawsuit is about.").

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Currently, Mr. Epstein's deposition is scheduled on October 12, 2018. Mr. Epstein's deposition is premature until this Court and the parties arrive at an agreeable deposition schedule. Accordingly, we have advised Plaintiff's counsel that Mr. Epstein will not appear for his deposition until sequencing issues and other discovery matters are resolved.

The Civil Scheduling Order entered by The Honorable John G. Koeltl (D.E. 141) dated August 8, 2018, does not provide that all Defendants' depositions must be completed before the Plaintiff is required to sit for her deposition.

Mr. Epstein respectfully requests this Court's assistance in arriving at a mutually fair and acceptable deposition schedule at the October 12, 2018, pre-motion discovery conference.

Sincerely,

/s/ Scott J. Link

Scott J. Link

SJL/tlc

cc: All counsel of record (ECF)
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