

# AGNIFILO INTRATER

October 15, 2024

**BY ECF**

Hon. Arun Subramanian  
United States District Judge  
Southern District of New York  
500 Pearl Street  
New York, NY 10007

Re: *United States v. Combs*, 24-cr-542 (AS)

Dear Judge Subramanian:

We write on behalf of our client, Mr. Sean Combs, pursuant to Federal Rule of Criminal Procedure 7(f), to request that the Court direct the government to identify its alleged victims so that Mr. Combs can prepare for trial and to allow defense counsel to ensure compliance with Local Rule 23.1.<sup>1</sup>

## **I. Background**

This case is unique, in part because of the number of individuals levying allegations against Mr. Combs due to his celebrity status, wealth, and the publicity of his previously settled lawsuit and the grand jury leaks and false inflammatory statements by the DHS agents, as outlined in our previous motion. *See* ECF Nos. 30-32. This has had a pervasive ripple effect, resulting in a torrent of allegations by unidentified complainants, spanning from the false to outright absurd. Yesterday alone, anonymous accusers filed an additional six lawsuits.<sup>2</sup> Counsel for these accusers recently convened a press conference (prior to filing) at which he claimed to represent 120 accusers making outrageous and deeply prejudicial allegations, including violent sexual assault and sexual abuse of minors.<sup>3</sup> This publicity stunt, broadcast on Instagram, included a “1-800” number that reportedly received 12,000 calls in the first 24 hours.<sup>4</sup> These accusations came on the heels of more than a

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<sup>1</sup> We respectfully move for a bill of particulars under Rule 7(f) without prejudice to our ability to make additional motions for a bill of particulars with respect to other deficiencies in the Indictment.

<sup>2</sup> *Jane Doe v. Combs, et al.*, 24-cv-7769 (S.D.N.Y.) (filed October 14, 2024); *John Doe v. Combs*, 24-cv-7772 (S.D.N.Y.) (filed October 14, 2024); *John Doe v. Combs, et al.*, 24-cv-7774 (S.D.N.Y.) (filed October 14, 2024); *John Doe v. Combs, et al.*, 24-cv-7776 (S.D.N.Y.) (filed October 14, 2024); *Jane Doe v. Combs, et al.*, 24-cv-7777 (S.D.N.Y.) (filed October 14, 2024). These allegations were all brought on behalf of unidentified plaintiffs, whose allegations date back to the mid-90s.

<sup>3</sup> *See, e.g.*, Chloe Melas & Antonio Planas, *Sean ‘Diddy’ Combs hit with a wave of 120 new sexual assault allegations*, NBC News (Oct. 1, 2024), <https://www.nbcnews.com/news/crime-courts/sean-diddy-combs-hit-wave-120-new-sexual-assault-allegations-rcna173474>.

<sup>4</sup> Emily Crane, *Sean ‘Diddy’ Combs hotline gets staggering 12K calls in just 24 hours, lawyer claims*, N.Y. Post (Oct. 4, 2024), <https://nypost.com/2024/10/04/entertainment/diddy-combs-hotline-gets-12k-calls-in-one-day-lawyer-claims/>.

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dozen lawsuits previously filed and currently pending, several of which have already been discredited but only after irreparably damaging Mr. Combs' character and reputation.<sup>5</sup> These swirling allegations have created a hysterical media circus that, if left unchecked, will irreparably deprive Mr. Combs of a fair trial, if they haven't already.

In light of the number and anonymity of accusers, on October 7, 2024, Mr. Combs asked the government to identify its alleged victims. *See* Exh. 1. Counsel has conferred with the government, who opposes disclosure of alleged victims' names at this stage.

## II. The Court Should Require the Government to Identify its Alleged Victims

Bills of particulars are appropriate to permit a defendant "to identify with sufficient particularity the nature of the charge pending against him, thereby enabling defendant to prepare for trial, to prevent surprise, and to interpose a plea of double jeopardy should he be prosecuted a second time for the same offense." *United States v. Davidoff*, 845 F.2d 1151, 1154 (2d Cir. 1988) (quoting *United States v. Bortnovsky*, 820 F.2d 572, 574 (2d Cir. 1987)). These principles are applied with particular care when the government charges RICO, as it has here. *See id.* As the Second Circuit explained: "With the wide latitude accorded the prosecution to frame a charge that a defendant has 'conspired' to promote the affairs of an 'enterprise' through a 'pattern of racketeering activity' comes an obligation to particularize the nature of the charge to a degree that might not be necessary in the prosecution of crimes of more limited scope." *Id.* With these principles in mind, the Circuit held in *Davidoff* that, where the government failed to identify the victims of uncharged schemes that it intended to include at trial, the district court committed reversible error by failing to grant a bill of particulars. *See id.*

Here, the Indictment broadly alleges that, "[f]or decades," Mr. Combs "abused, threatened, and coerced" undisclosed and unidentified "women and others around him to fulfill his sexual desires," ECF No. 2 ¶ 1, and that he engaged in a "persistent and pervasive pattern of abuse toward women and other individuals," including "verbal, emotional, physical, and sexual" abuse, and "manipulat[ing] women" to participate in sexual activity. *Id.* ¶ 3. This could be interpreted as

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<sup>5</sup> Several of these claims have already been discredited. For example, the attorneys for one plaintiff recently filed a Motion to Withdraw as Counsel of Record, citing, among other things, the plaintiff's "questionable antics" and "a fundamental disagreement" with plaintiff "regarding almost every aspect of the litigation." Mem. of Law in Support of Mot. to Withdraw as Counsel of Record at 6-7, *English v. Combs et al.*, No. 24-cv-05090-AT (S.D.N.Y. Oct. 2, 2024). Shortly after the filing of a different civil action, *Graves v. Combs et al.*, No. 24-cv-07201 (S.D.N.Y. Sept. 24, 2024), the accuser's ex-boyfriend came forward with reports that the accuser had tried to bribe him \$3 million to corroborate her allegations and had told him she was suing Mr. Combs "Because he's the one that has the money." Marc Griffin, *Diddy Accuser's Ex-Boyfriend Claims He was Bribed to Corroborate Her Story* (Oct. 9, 2024), <https://www.vibe.com/news/entertainment/diddy-accuser-ex-boyfriend-bribed-thalia-graves-1234930949/>. Additionally, the attorney representing plaintiffs in four separate suits against Mr. Combs was recently referred to this Court's Grievance Committee for engaging in a "pattern" of "improperly fil[ing] cases in federal court to garner media attention, embarrass defendants with salacious allegations, and pressure defendants to settle quickly." *Zunzurovski v. Fisher*, No. 23 Civ. 10881, 2024 WL 1434076, at \*5 (S.D.N.Y. Apr. 3, 2024).

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treating Mr. Combs' entire sexual history over the past sixteen years as part of the alleged criminal conspiracy.

The government should be required to identify its alleged victims for several reasons.

*First*, without clarity from the government, Mr. Combs has no way of knowing which allegations the government is relying on for purposes of the Indictment. Other than Victim-1, there is no way for Mr. Combs to determine who the other unidentified alleged victims are. The number of potential alleged victims and the length of time alleged in the Indictment both weigh in favor of a bill of particulars. *See United States v. Nachamie*, 91 F. Supp. 2d 565, 572 (S.D.N.Y. 2000) (ordering bill of particulars for names of unindicted co-conspirators where there was “a large number of co-conspirators (eight defendants and an unknown number of unindicted co-conspirators) and the alleged conspiracy has operated for a significant period of time (more than three years).”). Moreover, to the extent Mr. Combs is forced to mount a defense against criminal allegations that the government does *not* seek to prove at trial, he is entitled to know that. *See Bortnovsky*, 820 F.2d at 574 (explaining that, where government failed to identify which alleged claims were deemed fake, defendants were “hindered in preparing their defense” and forced to defend all claims, even those that the government were “uncertain were fake”). Absent a bill of particulars, the government is forcing him, unfairly, to play a guessing game—one made all the more challenging by the onslaught of baseless allegations that desperate plaintiffs are lodging at him (for the most part anonymously) in civil suits designed to exact a payoff from Mr. Combs and others.

*Second*, given the anticipated amount of discovery and the expected time required for its production, Mr. Combs will be unable to adduce the identities of the purported victims from the discovery without the assistance of the government. Mr. Combs also anticipates that the discovery will contain voluminous evidence of *consensual* sexual activity – making it all the more difficult for Mr. Combs to ascertain which of his prior sexual partners now claim, years later, that they felt coerced. Even if it were possible to ascertain the victims' identity from the discovery, and especially given the volume of anticipated discovery, it is unfair to require Mr. Combs to spend significant time trying to unearth the alleged victims' identities. *See Bortnovsky*, 820 F.2d at 575 (“The Government d[oes] not fulfill its obligation merely by providing mountains of documents to defense counsel[,], who [a]re left unguided as to which documents [the Government will use at trial].”).

*Third*, the publicity of these allegations in civil suits seriously undermine Mr. Combs' right to a fair trial. The attorneys and plaintiffs making these allegations are not bound by Local Rule 23.1 and can therefore make (and have made) limitless and unchallenged statements to the press. Mr. Combs' denials, on the other hand, are constrained by Rule 23.1 because he does not know which allegations are credited by the government and thus come within the ambit of the Local Rule. Under the circumstances, the Court should require disclosure of the government's alleged victims and allow Mr. Combs to respond to allegations of other, uncredited and unrelated accusers. *See United States v. Ming He*, 94 F.3d 782, 792 (2d Cir. 1996) (court can use its supervisory authority to assure that “fair standards of procedure are maintained”).

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We appreciate the Court's consideration.

Dated: October 15, 2024

Respectfully submitted,



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cc: All counsel (by ECF)

# **EXHIBIT 1**

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October 7, 2024

VIA EMAIL

AUSAs Johnson, Slavik, Smyser, Steiner, and Foster  
United States Attorney's Office  
Southern District of New York  
26 Federal Plaza  
New York, New York 10278

Re: United States v. Combs, 24-cr-542 (AS)

Dear AUSAs Johnson, Slavik, Smyser, Steiner, and Foster:

We write on behalf of our client, Mr. Sean Combs, regarding serious threats to his rights to due process and a fair trial.

**1. The Government Must Identify Who – Out of the Many Pretend Victims – It Considers An Alleged Victim for Purposes of the Indictment**

The Indictment treats Mr. Combs' sexual history over the past sixteen years, from 2008 through 2024, as part of an alleged vast criminal conspiracy. The government has claimed that there are "multiple" victims, yet has not identified any. *See* ECF No. 15 at 3. Other than Victim-1, there is no way for Mr. Combs to determine who these other unidentified alleged victims are. Nor do we anticipate being able to ascertain the identity of the alleged victims from the discovery, which we understand will reflect videos of unambiguously consensual sex. As a result, Mr. Combs will be unable to tell which of his prior sexual partners now claim, years later, that they felt coerced. The government is thus forcing him, unfairly, to play a guessing a game—one made all the more challenging by the slew of baseless allegations that desperate plaintiffs are lodging at him (for the most part anonymously) in opportunistic civil suits.

To enable Mr. Combs to prepare for trial consistent with due process, the government must provide greater particularity on the charges against him—specifically, the identity of the alleged victims. *See* Fed. R. Crim. P. 7(f). In order for Mr. Combs to defend against the charges against him effectively, it is imperative that he know the identity of the alleged victims. *See United States v. Davidoff*, 845 F.2d 1151, 1154 (2d Cir. 1988) (explaining that, even in a RICO case, "the trial judge exceeded his discretion . . . by denying a bill of particulars identifying at least the victims of discrete . . . schemes that the prosecution intended to prove"). Accordingly, we demand that the government provide the names of all individuals it considers to be victims of Mr. Combs' alleged criminal conduct.

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## **2. The Government Must Immediately Produce the Substantial Amount of Exculpatory Material in its Possession**

We also demand materials and information pursuant to Rule 16 of the Federal Rules of Criminal Procedure, *Brady v. Maryland*, 373 U.S. 83 (1963), and its progeny, *Giglio v. United States*, 405 U.S. 105 (1972), and its progeny, the Fifth and Sixth Amendments to the United States Constitution, U.S. Attorney Manual § 9-5.001, and the rules and orders promulgated by the Court pursuant to Federal Rule of Criminal Procedure 5(f), ECF No. 14.

We demand that you immediately turn over all exculpatory material in your possession, including but not limited to the following:

- a. All information indicating that participation in the “Freak Offs” was consensual, including evidence and statements from alleged victims and other participants that (1) all participants were adults capable of deciding whether or not to participate; (2) to the extent any participants consumed drugs or alcohol, they did so voluntarily; (3) at no point did any participant express any unwillingness to participate; (4) to the extent any participant expressed unwillingness, they were not forced to participate.
- b. All information showing that the alleged victims and witnesses are lying, exaggerating, or are otherwise unreliable, including all information relating to the alleged victims’ financial, reputational, personal, or professional motivations to claim abuse.
- c. All information showing that, prior to the alleged victims’ motivation to lie, they were not afraid of Mr. Combs, and never reported, whether formally or informally, any instances of coercion, force, or abuse.
- d. All information showing that, to the extent there were any disputes between Mr. Combs and any alleged victims, those were disputes related to infidelity or other interpersonal matters, and not related to alleged force or coercion to participate in a sexual activity.
- e. All information relating to the government’s unsuccessful attempts to find corroborating information from local law enforcement, 911 records, hospital records, or any other contemporaneous reporting.
- f. All information relating to the government’s failure to fully investigate alleged victims, including failures to obtain the alleged victims’ phone records, email records, travel records, arrest records, medical records, drug abuse and rehabilitation records, draft memoirs, financial records, and attempts to commit extortion.
- g. All information relating to the government’s failure to fully investigate the alleged victims’ agency and freedom during the alleged periods of coercion and abuse, including failures to investigate the alleged victims’ financial records, transportation records, employment records, and housing records.

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- h. All information regarding individuals who have claimed to be victims, but who have *not* been credited or corroborated by the government. Indeed, many of Mr. Combs' accusers have already been discredited.<sup>1</sup>
- i. All information relating to the leak of the hotel footage by law enforcement, including communications by and among government agents about the leak, internal investigations relating to the leak, and the identity of the HSI agent or agents who were responsible for the leak.
- j. All information suggesting that the decision to prosecute Mr. Combs was racially motivated, including information relating to the government's previous, unsuccessful attempts to investigate and prosecute Mr. Combs, and information relating to the government's decision to charge Mr. Combs with a racially-motivated and -discriminatory statute.
- k. Any information inconsistent with the facts asserted in the affidavits filed in connection with search warrants in this case, including, [REDACTED]

We expect that your witness statements contain such material. If any such statements contain any *Brady* material, they must be immediately produced notwithstanding the fact that they may be otherwise governed by 18 U.S.C. § 3500. See *United States v. Vilar*, No. 05 VR.621(RJS), 2008 WL 2531195, at \*1 (S.D.N.Y. June 22, 2008) (“[I]t is well settled that Section 3500’s bar on early disclosure of witness statements must give way to the constitutional disclosure obligations set forth in *Brady* and its progeny.”). This request also specifically includes notes of conversations and meetings with counsel for alleged victims and witnesses.

We further request that you direct others acting on your behalf – including your agents, witnesses, and alleged victims – to turn over this information that is in their possession. The government cannot avoid its *Brady* obligations by sticking its head in the sand. See *Kyles v. Whitley*, 514 U.S. 419, 437-38 (1995) (government has a duty to learn of any favorable evidence “known to others acting in the government’s behalf”).

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<sup>1</sup> For example, the attorneys for one plaintiff recently filed a Motion to Withdraw as Counsel of Record, citing, among other things, “a fundamental disagreement” with plaintiff “regarding almost every aspect of the litigation.” Mem. of Law in Support of Mot. to Withdraw as Counsel of Record at 6-7, *English v. Combs et al.*, No. 24-cv-05090-AT (S.D.N.Y. Oct. 2, 2024). Additionally, counsel for plaintiffs in four separate suits against Mr. Combs, Tyrone Blackburn, was recently referred to this Court’s Grievance Committee for engaging in a “pattern” of “improperly fil[ing] cases in federal court to garner media attention, embarrass defendants with salacious allegations, and pressure defendants to settle quickly.” *Zunzurovski v. Fisher*, No. 23 Civ. 10881, 2024 WL 1434076, at \*5 (S.D.N.Y. Apr. 3, 2024).



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The government cannot meet its ethical obligations by simply producing massive amounts of electronic evidence without specifically pointing out exculpatory material. Given the volume of discovery produced in this case – which apparently amounts to four terabytes of data – and the breadth of the investigation, the government is obligated to specifically identify *Brady* material among the discovery it plans to produce. *See, e.g., United States v. Thomas*, 981 F. Supp. 2d 229, 239 (S.D.N.Y. 2013) (“[T]he Government cannot hide *Brady* material as an exculpatory needle in a haystack of discovery materials.”).

### **3. The Government Should Direct Its Alleged Victims, Witnesses, and Prospective Victims and Witnesses to Refrain from Speaking to the Press**

As you are aware, Mr. Combs’ right to a fair and impartial jury is becoming increasingly jeopardized every day. His case is being litigated in the press, largely by nameless accusers with uncorroborated stories, who seek to capitalize on the government’s allegations and are looking for a quick payday. Because Mr. Combs has no idea who the government is crediting as an alleged victim for purposes of the criminal case, Local Rule 23.1 prevents him from defending himself against *any* of these allegations, no matter how untrue.

The government has an obligation to ensure that Mr. Combs receives a fair trial. This obligation should, at a minimum, require the government to direct its agents, alleged victims, and witnesses to refrain from speaking with the press. *See* Local Rule 23.1. This is particularly warranted given the number of government leaks to date. It is also warranted in light of the alleged victims’ deeply prejudicial allegations, to which Mr. Combs cannot respond, and which taint the jury pool. The most recent allegations concerning abuse of minors is particularly troubling and have the potential to irreversibly poison the jury pool. Under the circumstances, the government cannot sit by and let such public disseminations interfere with Mr. Combs’ right to a fair trial.

Thank you for your cooperation. If the government declines to specifically identify and provide any of the information requested, or refuses to so advise its alleged victims and witnesses, please advise us of the government’s objection so that we may promptly bring any such dispute to the Court’s attention.

Sincerely,



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