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To: [REDACTED]	Company: United States Attorney, Southern District of Florida	Fax #: [REDACTED]	Direct #: [REDACTED]
CC: Martin G. Weinberg, Esq.	Company:	Fax #:	Direct #:
From: Sandra Musumeci for Jay P. Lefkowitz, P.C.	Date: July 29, 2011	Pages w/cover: 4	Fax #: [REDACTED]
Direct #: [REDACTED]			

Message:

Please see the attached letter, in response to your letter to Martin Weinberg of July 27, 2011, concerning Jeffrey Epstein. Thank you.

KIRKLAND & ELLIS LLP
AND AFFILIATED PARTNERSHIPS

601 Lexington Avenue
New York, New York 10022

Jay P. Lefkowitz, P.C.
To Call Writer Directly:

jay.lefkowitz@kirkland.com

www.kirkland.com

Facsimile:

July 29, 2011

Delivery by Facsimile

CONFIDENTIAL

Assistant United States Attorney
United States Attorney, Southern District of Florida
500 S. Australian Avenue
Suite 400
West Palm Beach, FL 33401

Re: Jeffrey Epstein

Dear

Thank you for your letter of July 27, 2011 to my co-counsel Martin Weinberg concerning the request by the New York District Attorney for copies of the Non-Prosecution Agreement ("NPA") and the "victim list" in regards to Mr. Epstein. We continue for the reasons stated herein to believe that any such disclosure would violate the confidentiality agreement between your Office and Mr. Epstein as well as the provisions of Fed. R. Crim. P. 6(e).

As to the NPA, you have repeatedly asserted in Doe v United States, No. 9:08-cv-80736-KAM, that the NPA was a *confidential document*. For instance, in paragraph 6 of Document 14, your own Declaration, you stated that the NPA contained "an express confidentiality provision." In opposing the Motion to Unseal the NPA that was filed by Jane Doe, you stated that you had informed Judge Marra of the confidentiality provision during an earlier telephonic status conference occurring on August 14, 2008 which "the United States was obligated to honor," Document 29 at 1, and that "the parties who negotiated the Agreement, the United States Attorney's Office and Jeffrey Epstein, determined that the Agreement should remain confidential," Document 29 at 2. Further, you deemed the NPA "confidential," for understandable purposes, in your September 3, 2008 letter to Robert Josefsberg in which you informed him that Judge Marra had set forth procedures for providing the NPA only to those counsel and "victims" who executed a Protective Order preventing its subsequent disclosure.

The New York Assistant District Attorney, Ms. Morse, is representing the prosecution in an appeal regarding a sex offender registration determination, and any disclosure of the NPA to her has the potential to result in its use in that appeal and the real risk that the appellate court will unseal it. We believe it to violate both the spirit and the most logical interpretation of the NPA,

KIRKLAND & ELLIS LLP

[REDACTED]
July 29, 2011

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paragraph 13, for you to disclose it absent a subpoena -- which we could oppose in the jurisdiction from which it emanated. We further believe that when parole evidence supplements the text of paragraph 13 of the NPA, it is perfectly apparent from your prior submissions that you as well as we believed the NPA to contain "an express confidentiality provision" that your current willingness to disclose absent court process violates.

As to the "victim list," again, not only is it confidential given its nexus to the NPA, but your own prior letters tie the list to the Federal Grand Jury investigation and thus to the non-disclosure provisions of Fed. R. Crim. P. 6(e). On July 8, 2008, you wrote to Jack A. Goldberger, Esq., and informed him that on June 30, 2008, "the United States Attorney's Office provided [him] with a list of thirty-one individuals '*whom it was prepared to name in an Indictment*' as victims of an enumerated offense by Mr. Epstein." (emphasis added). On July 9, 2008, you wrote in a follow-up letter to Mr. Goldberger that "the U.S. Attorney's modification of the 2255 portion of the Agreement now limits our victim list to those persons *whom the United States was prepared to include in an indictment*. This means that, pursuant to Justice Department policy, these are individuals for whom the United States believes it has proof beyond a reasonable doubt that each of them was a victim of an enumerated offense." (emphasis added). First Assistant United States Attorney Jeffrey Sloman used similar language in tying the names of the "victims" to the basis for a potential indictment, see December 6, 2007 letter from Mr. Sloman to Mr. Lefkowitz at 2, 3; see also your email to Mr. Lefkowitz and Mr. Black on August 14, 2008 at 3:27 p.m., where you state that the list contains "only those 'individuals whom [the United States] was prepared to name in an Indictment...,'" thus clearly providing the nexus between the list and the Grand Jury investigation and its corollary, the protections from non-disclosure enumerated in Fed. R. Crim. P. 6(e).

In terms of case law, the names of witnesses that either testified or were identified during Grand Jury proceedings are subject to the secrecy provisions of Fed. R. Crim. P. 6(e). See, e.g., In re Grand Jury Subpoena, Judith Miller, 438 F.3d 1138, 1140 (D.C. Cir. 2006) ("Consistent with these purposes, we have recognized that grand jury secrecy covers 'the identities of witnesses or jurors, the substance of testimony as well as actual transcripts, the strategy or direction of the investigation, the deliberations or questions of jurors, and the like.'" (citing In re Dow Jones & Co., Inc., 142 F.3d 496, 500 (D.C. Cir. 1998)); see also SEC v Dresser Industr. Inc., 628 F.2d 1368, 1382 (D.C. Cir. 1980); Fund for Constitutional Gov't v Nat'l Archives & Records Serv., 656 F.2d 856, 869 (D.C. Cir. 1981). Indeed, it is generally recognized that the scope of protection accorded to Grand Jury proceedings under Rule 6(e) is broad and encompasses, among other things, information such as the "victim list" at issue here:

KIRKLAND & ELLIS LLP

[REDACTED]
July 29, 2011

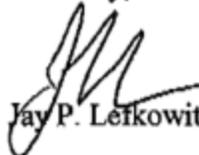
Page 3

We construe the secrecy provisions of Rule 6(e) to apply not only to disclosures of events which have already occurred before the grand jury, such as a witness's testimony, but also to disclosures of matters which will occur, such as statements which reveal the identity of persons who will be called to testify or which report when the grand jury will return an indictment.

In re Grand Jury Investigation, 610 F.2d 202, 216-17 (5th Cir. 1980).¹

We believe that confidentiality applies to the requested information. We believe that any non-compulsory handover of the list or NPA is inconsistent with the positions you have previously taken in related litigation. Accordingly, we request that you reconsider and decline the request of the New York District Attorney.

Sincerely,



Jay P. Leikowitz, P.C.

Cc: Martin G. Weinberg

JPL/slm

¹ Decisions of the United States Court of Appeals for the Fifth Circuit handed down prior to September 30, 1981, are binding as precedent in the Eleventh Circuit. See Bonner v. City of Prichard, Ala., 661 F.2d 1206, 1207 (11th Cir. 1981).

ROY BLACK
HOWARD M. SREBNICK
SCOTT A. KORNSPAN
LARRY A. STUMPF
MARIA NEYRA
JACKIE PERCZEK
MARK A.J. SHAPIRO
JARED LOPEZ

BLACK
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JESSICA FONSECA-NADER
KATHLEEN P. PHILLIPS
AARON ANTHON
MARCOS BEATON, JR.
MATTHEW P. O'BRIEN
JENIFER J. SOULIKIAS
NOAH FOX

E-Mail: [REDACTED]

September 1, 2009

[REDACTED]
Assistant U.S. Attorney
United States Attorney's Office
99 N.E. 4th Street
Miami, Florida 33132

RE: Jeffrey Epstein

Dear [REDACTED]

Once again I need to send you a note about Jeffrey Epstein, mainly to keep you in the loop so we don't inadvertently violate any provision of his agreement with your office. As I am sure you are aware, Mr. Epstein has finished the incarceration portion of his sentence and is now serving the one year of community control as mandated by both his state plea and the terms of the non-prosecution agreement with the United States Attorney's Office for the Southern District of Florida.

Mr. Epstein is in compliance with all terms of his community control and is applying for transfer of his supervision from the State of Florida to his primary residence, the Virgin Islands. This transfer is being requested through the Intrastate Compact for Transfer of Adult Supervision (ICAOS). The ICAOS is the mechanism for which transfers of probation and community control are effectuated. The process requires the offender to seek the approval of the sending state (in this case Florida) and, if they agree, the receiving state (in this case the United States Virgin Islands) and the United States Virgin Islands after investigation has pre-approved the transfer under the same exact conditions of supervision as imposed in Mr. Epstein's community control sentence in the State of Florida.

Even though Mr. Epstein is requesting the transfer he is still at the home

Jeffrey Sloman, Esq.
September 1, 2009
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in Palm Beach following the rules of state community control. As Mr. Epstein's lawyers, we believe that his request to administratively transfer his community control is in full compliance with both his state plea agreement and the non-prosecution agreement with the United States Attorney's Office. Nonetheless we have taken to heart your previous suggestion of erring on the side of caution and thus we are advising you of this request.

I am happy to discuss this with you at any time. I did not want to set an appointment to see you on this issue since I imagine you have more pressing matters to deal with than a transfer of a state community control matter.

Very truly yours,

A handwritten signature in black ink, appearing to read "Roy Black", written in a cursive style.

Roy Black

RB/wg

Black, Srebnick, Kornspan & Stumpf, P.A.

EFTA00180299

ROY BLACK
HOWARD M. SREBNICK
SCOTT A. KORNSPAN
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JENIFER J. SOULIKIAS
NOAH FOX

E-Mail: [REDACTED]

February 18, 2010

[REDACTED]
Assistant United States Attorney
99 N.E. 4th Street
Miami, FL 33132

RE: Jeffrey Epstein

Dear [REDACTED]

Thank you for your letter of February 11, 2010. We write to update you about ongoing efforts to reach an agreement with Robert Josefsberg regarding the amount of fees and costs properly owed to him by Mr. Epstein pursuant to the NPA.

On February 16, 2010 Mr. Epstein's principal civil counsel Bob Critton advised Mr. Josefsberg in writing that he and Mr. Epstein would meet with Mr. Josefsberg on two occasions between now and March 1, 2010 to review Mr. Josefsberg's outstanding bills on a line-by-line basis and attempt to reach a non-adversarial resolution of all outstanding fee issues. Mr. Critton also transmitted to Mr. Josefsberg an Agreement for Special Master to Determine Amount of Attorneys' Fees and Costs ("Special Master Agreement"), signed by Mr. Epstein, containing terms and conditions previously agreed to by Mr. Josefsberg, which would mandate binding mediation before a neutral third party in the event the proposed settlement discussions did not resolve all outstanding issues in an expeditious manner.

We want to assure you that Mr. Epstein fully intends to fulfill his obligations under the NPA. We regret that issues remain unresolved regarding whether all of the fees and costs being sought by the attorney representative – which now total \$1,947,000 exclusive of the \$526,466 already paid by Mr. Epstein – meet the criteria set forth by the NPA. We assure you that both Mr. Epstein's prior civil counsel, Jay Lefkowitz, who, with you, was a primary negotiator of the NPA language, and Mr. Critton, each strongly believe that significant amounts of the fees and costs billed by Mr. Josefsberg are outside the scope of Mr. Epstein's fee-

Marie [REDACTED], Esq.
February 18, 2010
Page 2

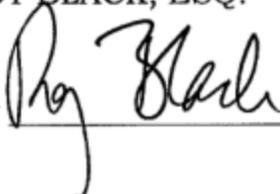
related payment obligations under the NPA. We hope that the fee-related issues can be resolved by further settlement discussions or by relying on the Special Master Agreement signed Tuesday February 16, 2010 by Mr. Epstein. Mr. Epstein and his counsel believe that these options are consistent with the NPA, are good faith alternatives to contested litigation, and are reasonable given the unexpected magnitude of the bills and their inclusion of charges for legal work that was clearly related to the preparation of litigation and thus outside Par 7C of the Addendum as well as for extensive work performed by attorneys from outside Mr. Josefsberg's law firm.

Mr. Josefsberg previously advocated for settling outstanding issues through a Special Master Agreement nearly identical to the one executed Tuesday by Mr. Epstein. In fact, Mr. Josefsberg and Mr. Epstein had each agreed in the past to a specific Master as a third-party neutral to conduct proceedings to resolve the fee issues. However, the selected Master withdrew.

We hope that the Special Master Agreement will provide a basis for a prompt resolution of any issue not resolved by the parties through further discussions.

Respectfully submitted,

MARTIN WEINBERG, ESQ.
ROY BLACK, ESQ.

By  _____

/wg

cc:

[REDACTED]
Robert Senior, Esq.

March 20, 2011

To whom it may concern:

I served as U.S. Attorney for the Southern District of Florida from 2005 through 2009. Over the past weeks, I have read much regarding Mr. Jeffrey Epstein. Some appears true, some appears distorted. I thought it appropriate to provide some background, with two caveats: (i) under Justice Department guidelines, I cannot discuss privileged internal communications among Department attorneys and (ii) I no longer have access to the original documents, and as the matter is now nearly 4 years old, the precision of memory is reduced.

The Epstein matter was originally presented to the Palm Beach County State Attorney. Palm Beach Police alleged that Epstein unlawfully hired underage high-school females to provide him sexually lewd and erotic massages. Police sought felony charges that would have resulted in a term of imprisonment. According to press reports, however, in 2006 the State Attorney, in part due to concerns regarding the quality of the evidence, agreed to charge Epstein only with one count of aggravated assault with no intent to commit a felony. That charge would have resulted in no jail time, no requirement to register as a sexual offender and no restitution for the underage victims.

Local police were dissatisfied with the State Attorney's conclusions, and requested a federal investigation. Federal authorities received the State's evidence and engaged in additional investigation. Prosecutors weighed the quality of the evidence and the likelihood for success at trial. With a federal case, there were two additional considerations. First, a federal criminal prosecution requires that the crime be more than local; it must have an interstate nexus. Second, as the matter was initially charged by the state, the federal responsibility is, to some extent, to back-stop state authorities to ensure that there is no miscarriage of justice, and not to also prosecute federally that which has already been charged at the state level.

After considering the quality of the evidence and the additional considerations, prosecutors concluded that the state charge was insufficient. In early summer 2007, the prosecutors and agents in this case met with Mr. Epstein's attorney, Roy Black. Mr. Black is perhaps best known for his successful defense of William Kennedy Smith. The prosecutors presented Epstein a choice: plead to more serious state felony charges (that would result in 2 years' imprisonment, registration as a sexual offender, and restitution for the victims) or else prepare for a federal felony trial.

What followed was a year-long assault on the prosecution and the prosecutors. I use the word assault intentionally, as the defense in this case was more aggressive than any which I, or the prosecutors in my office, had previously encountered. Mr. Epstein hired an army of legal superstars: Harvard Professor Alan Dershowitz, former Judge and then Pepperdine Law Dean Kenneth Starr, former Deputy Assistant to the President and then Kirkland & Ellis Partner Jay Lefkowitz, and several others, including prosecutors who had formally worked in the U.S.

Attorney's Office and in the Child Exploitation and Obscenity Section of the Justice Department. Defense attorneys next requested a meeting with me to challenge the prosecution and the terms previously presented by the prosecutors in their meeting with Mr. Black. The prosecution team and I met with defense counsel in Fall 2007, and I reaffirmed the office's position: two years, registration and restitution, or trial.

Over the next several months, the defense team presented argument after argument claiming that felony criminal proceedings against Epstein were unsupported by the evidence and lacked a basis in law, and that the office's insistence on jail-time was motivated by a zeal to overcharge a man merely because he is wealthy. They bolstered their arguments with legal opinions from well-known legal experts. One member of the defense team warned me that the office's excess zeal in forcing a good man to serve time in jail might be the subject of a book if we continued to proceed with this matter. My office systematically considered and rejected each argument, and when we did, my office's decisions were appealed to Washington. As to the warning, I ignored it.

The defense strategy was not limited to legal issues. Defense counsel investigated individual prosecutors and their families, looking for personal peccadilloes that may provide a basis for disqualification. Disqualifying a prosecutor is an effective (though rarely used) strategy, as eliminating the individuals most familiar with the facts and thus most qualified to take a case to trial harms likelihood for success. Defense counsel tried to disqualify at least two prosecutors. I carefully reviewed, and then rejected, these arguments.

Despite this army of attorneys, the office held firm to the terms first presented to Mr. Black in the original meeting. On June 30, 2008, after yet another last minute appeal to Washington D.C. was rejected, Epstein pled guilty in state court. He was to serve 18 months imprisonment, register as a sexual offender for life and provide restitution to the victims.

Some may feel that the prosecution should have been tougher. Evidence that has come to light since 2007 may encourage that view. Many victims have since spoken out, filing detailed statements in civil cases seeking damages. Physical evidence has since been discovered. Had these additional statements and evidence been known, the outcome may have been different. But they were not known to us at the time.

A prosecution decision must be based on admissible facts known at the time. In cases of this type, those are unusually difficult because victims are frightened and often decline to testify or if they do speak, they give contradictory statements. Our judgment in this case, based on the evidence known at the time, was that it was better to have a billionaire serve time in jail, register as a sex offender and pay his victims restitution than risk a trial with a reduced likelihood of success. I supported that judgment then, and based on the state of the law as it then stood and the evidence known at that time, I would support that judgment again.

Epstein's treatment, while in state custody, likewise may encourage the view that the office should have been tougher. Epstein appears to have received highly unusual treatment while in jail. Although the terms of confinement in a state prison are a matter appropriately left to the

State of Florida, and not federal authorities, without doubt, the treatment that he received while in state custody undermined the purpose of a jail sentence.

Some may also believe that the prosecution should have been tougher in retaliation for the defense's tactics. The defense, arguably, often failed to negotiate in good faith. They would obtain concessions as part of a negotiation and agree to proceed, only to change their minds, and appeal the office's position to Washington. The investigations into the family lives of individual prosecutors were, in my opinion, uncalled for, as were the accusations of bias and / or misconduct against individual prosecutors. At times, some prosecutors felt that we should just go to trial, and at times I felt that frustration myself. What was right in the first meeting, however, remained right irrespective of defense tactics. Individuals have a constitutional right to a defense. The aggressive exercise of that right should not be punished, nor should a defense counsel's exercise of their right to appeal a U.S. Attorney to Washington, D.C. Prosecutors must be careful not to allow frustration and anger with defense counsel to influence their judgment.

After the plea, I recall receiving several phone calls. One was from the FBI Special Agent-In-Charge. He called to offer congratulations. He had been at many of the meetings regarding this case. He was aware of the tactics of the defense, and he called to praise our prosecutors for holding firm against the likes of Messrs. Black, Dershowitz, Lefkowitz and Starr. It was a proud moment. I also received calls or communications from Messrs. Dershowitz, Lefkowitz and Starr. I had known all three individuals previously, from my time in law school and at Kirkland & Ellis in the mid 90s. They all sought to make peace. I agreed to talk and meet with each of them after Epstein pled guilty, as I think it important that prosecutors battle defense attorneys in a case and then move on. I have tried, yet I confess that has been difficult to do fully in this case.

The bottom line is this: Mr. Jeffrey Epstein, a billionaire, served time in jail and is now a registered sex offender. He has been required to pay his victims restitution, though restitution clearly cannot compensate for the crime. And we know much more today about his crimes because the victims have come forward to speak out. Some may disagree with the prosecutorial judgments made in this case, but those individuals are not the ones who at the time reviewed the evidence available for trial and assessed the likelihood of success.

Respectfully,

R. Alexander Acosta
Former U.S. Attorney
Southern District of Florida

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION
CASE NO. 08-80119-CIV-MARRA

JANE DOE, et al.,

Plaintiffs,

vs.

JEFFREY EPSTEIN,

Defendant.

WEST PALM BEACH, FLORIDA

JUNE 12, 2009

x

TRANSCRIPT OF MOTION HEARING
BEFORE THE HONORABLE KENNETH A. MARRA,
UNITED STATES DISTRICT JUDGE

APPEARANCES:

FOR THE PLAINTIFFS:

ADAM D. HOROWITZ, ESQ.
Mermelstein & Horowitz
18205 Biscayne Boulevard
Miami, FL 33160
For Jane Doe

BRADLEY J. EDWARDS, ESQ.
Rothstein Rosenfeldt Adler
401 East Las Olas Boulevard
Fort Lauderdale, FL 33301
Jane Doe 3, 4, 5, 6, 7

ISIDRO M. GARCIA, ESQ.
Garcia Elkins Boehringer
224 Datura Avenue
West Palm Beach, FL 33401
Jane DOE II

RICHARD H. WILLITS, ESQ.
2290 10th Avenue North
Lake Worth, FL 33461
For C.M.A.

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ROBERT C. JOSEFSBERG, ESQ.
Podhurst Orseck Josefsberg
25 West Flagler Street
Miami, FL 33130
For Jane Doe 101 [REDACTED]
(Via telephone)

KATHERINE W. EZELL, ESQ.
Podhurst Orseck Josefsberg
25 West Flagler Street
Miami, FL 33130
For Jane Doe 101 [REDACTED]

FOR THE DEFENDANT:

ROBERT D. CRITTON, JR., ESQ.
MICHAEL BURMAN, ESQ.
Burman Critton, etc.
515 North Flagler Street
West Palm Beach, FL 33401
561.842.2820

JACK A. GOLDBERGER, ESQ.
Atterbury Goldberger Weiss
250 Australian Avenue South
West Palm Beach, FL 33401
[REDACTED]

AS AMICUS CURIAE:

[REDACTED]
Assistant U.S. Attorney
500 East Broward Boulevard
Fort Lauderdale, FL 33394
For U.S.A. [REDACTED]

MARTIN G. WEINBERG, ESQ.
20 Park Plaza
Boston MA 02116
(Via telephone) [REDACTED]
JAY LEFKOWITZ, ESQ.
(Via telephone)

REPORTED BY:

LARRY HERR, RPR-RMR-FCRR-AE
Official United States Court Reporter
Federally Certified Realtime Reporter
400 North Miami Avenue, Room 8N09
Miami, FL 33128 [REDACTED]

1 THE COURT: We are here in the various Doe vs. Epstein
2 cases.

3 May I have counsel state their appearances?

4 MR. HOROWITZ: Adam Horowitz, counsel for plaintiffs
5 Jane 2 through Jane Doe 7.

6 THE COURT: Good morning.

7 MR. EDWARDS: Brad Edwards, counsel for plaintiff Jane
8 Doe.

9 THE COURT: Good morning.

10 MR. GARCIA: Good morning, Your Honor. Sid Garcia for
11 Jane Doe II.

12 THE COURT: Good morning.

13 MR. WILLITS: Good morning, Your Honor. Richard
14 Willits, here on behalf of the plaintiff C.M.A..

15 THE COURT: Good morning.

16 MS. EZELL: Good morning, Your Honor. I'm Katherine
17 Ezell from Podhurst Orseck, here with Amy Adderly and Susan
18 Bennett, and I believe my partner, Bob Josefsberg, is going to
19 appear by telephone.

20 THE COURT: Mr. Josefsberg, are you there?

21 MR. JOSEFSBERG: I am, Your Honor.

22 THE COURT: Good morning.

23 MR. JOSEFSBERG: Good morning.

24 THE COURT: All right. Do we have all the plaintiffs
25 stated their appearances? Okay.

1 Defense?

2 MR. CRITTON: Your Honor, Robert Critton on behalf of
3 Mr. Epstein, and my partner, Michael Burman.

4 THE COURT: Good morning.

5 MR. GOLDBERGER: Good morning, Your Honor. Jack
6 Goldberger on behalf of Mr. Epstein.

7 THE COURT: I see we have some representatives from
8 the United States Attorney's Office here.

9 MS. [REDACTED]: Good morning, Your Honor. [REDACTED]
10 [REDACTED] for the U.S. Attorney's office.

11 THE COURT: Good morning.

12 Who else do we have on the phone?

13 MR. CRITTON: Your Honor, we have two members of the
14 defense team are on the phone, also.

15 THE COURT: Who do we have on the phone?

16 MR. WEINBERG: Martin Weinberg. Good morning, Your
17 Honor.

18 MR. LEFKOWITZ: Jay Lefkowitz. Good morning, Your
19 Honor.

20 THE COURT: Good morning.

21 I scheduled this hearing for very limited issues
22 which, as you all know, there's been a motion by Mr. Epstein to
23 stay the civil proceedings against him. The one issue I have
24 concern about is Mr. Epstein's contention or assertion that by
25 defending against the allegations in the civil proceedings, he

1 may expose himself to an allegation by the United States in the
2 non-prosecution agreement that he's violated that agreement and
3 therefore would subject himself to potential federal charges.

4 I had asked for some briefing on this. I asked the
5 United States to present its position to me. And I received
6 the Government's written response, which I frankly didn't find
7 very helpful. And I still am not sure I understand what the
8 Government's position is on it.

9 So first let me hear from Mr. Epstein's attorneys as
10 to what do you believe the concern is. I don't believe the
11 non-prosecution agreement has ever been filed in this Court; am
12 I correct?

13 MR. CRITTON: To my knowledge, Your Honor, it has not.

14 THE COURT: So I don't believe I've ever seen the
15 entire agreement. I've seen portions of it.

16 MR. EDWARDS: Your Honor, I believe that it was filed
17 under Jane Doe 1 and 2 vs. United States of America, case under
18 seal in your court.

19 THE COURT: Okay.

20 MR. EDWARDS: In a separate case.

21 THE COURT: In that case, okay. Was it actually filed
22 in that case?

23 MR. EDWARDS: I filed it under seal.

24 THE COURT: In any event, what's Mr. Epstein's concern
25 about if you defend the civil actions, you're going to expose

1 yourself to a claim for a breach by the United States of the
2 non-prosecution agreement?

3 MR. CRITTON: Robert Critton.

4 Your Honor, our position on this case is, I'd say is
5 somewhat different. When this issue originally came before the
6 Court, as you are aware prior to my firm's involvement in the
7 case, there was a motion filed on behalf of Mr. Epstein seeking
8 a stay. And I think it was in Jane Doe 102 and then
9 subsequently Jane Doe 2 through 5 because all of those cases
10 were filed on or about the same time.

11 And at that time the Court looked at the issue and it
12 was based upon a statutory provision at that time. And the
13 Court said I don't find that it's applicable, or for whatever
14 reason I think the Court said I don't consider that to be a
15 pending proceeding or a proceeding at that particular time.

16 In that same order, which was in Jane Doe 2, I
17 believe it's -- not I believe, I know it's docket entry 33, the
18 Court also went on to talk about at that particular point in
19 time dealt with the issue of the discretionary stay.

20 And the Court said at that time, I'm paraphrasing, but
21 the Court also does not believe a discretionary stay is
22 warranted. And what the Court went on to say is that if
23 defendant does not breach the agreement, then he should have no
24 concerns regarding his Fifth Amendment right against
25 self-incrimination.

1 The fact that the U.S. Attorney or other law
2 enforcement officials may object to some discovery in these
3 civil cases is not in and of itself a reason to stay the civil
4 litigation, so that any such issue shall be resolved as they
5 arise in the course of the litigation.

6 And I would respectfully submit to the Court that the
7 position that the Government has taken in its most recent
8 filings changes the playing field dramatically. Because what
9 the Government in essence has said as distinct from the U.S.
10 saying is, well, we object to some discovery, or we may object
11 to some discovery in the civil cases.

12 What they have, in essence, said is if you take some
13 action, Mr. Epstein, that we believe unilaterally, and this is
14 on pages 13 and 14 of their pleading or of their response memo
15 to the Court's inquiry, they say if Mr. Epstein breaches the
16 agreement. They said it's basically like a contract, and if
17 one side breaches, the other side can sue.

18 In this instance what the Government will do is if we
19 believe that Mr. Epstein has breached the agreement, we'll
20 indict him. We will indict him. And his remedy under that
21 circumstance, which is an incredible and catastrophic catch 22
22 is, we'll indict him and then he can move to dismiss. That's a
23 great option.

24 In this particular instance my mandate in defending --
25 and that's a dramatic change in the Government's position,

1 because the Government is not saying, and the Court was pretty
2 specific in what you asked the Government for in its response
3 is, in essence, and it's the same question in a more limited
4 fashion you're posing today is whether Mr. Epstein's defense of
5 the civil action violates the NPA agreement, the
6 non-prosecution agreement, between the U.S. and Mr. Epstein.

7 And the Government refuses to answer that question.
8 They won't come out and say, yes, it will, or no, it won't.
9 What they're doing is they want to sit on the sideline, and as
10 their papers suggest is, they want us to lay in wait and that
11 if, in fact, they believe he violates a provision of the NPA as
12 it relates to the defense of this case or these multitude of
13 cases, then they can come in and indict him -- no notice, no
14 opportunity to cure.

15 We don't think that's what the NPA says, but that's
16 certainly what their papers say. We'll indict him, no notice,
17 no opportunity to cure. We will indict him, and his remedy
18 under that circumstance is that he can move to dismiss the
19 indictment.

20 Well, that's great except Mr. Epstein, his mandate to
21 me and I know his mandate to his criminal lawyers, is: Make
22 certain I don't do anything, in particular in these civil cases
23 that would in any way suggest that I am in willful violation of
24 the NPA.

25 Now, in the Court's prior ruling in the docket entry

1 33, certainly some aspects of the NPA are within Mr. Epstein's
2 control. There's no question about that. But aspects that
3 relate to the defense of these cases, either in terms of the
4 civil lawyers who are defending these, I think there's 12 or 13
5 pending cases in front of you, there's another four cases in
6 the state court, is the risk is substantial, it's real, and it
7 presents a chilling effect for the civil lawyers in moving
8 forward to determine whether or not we're taking some action
9 that in some way may be a violation of the NPA.

10 And the Government's, again, refusal or non-position
11 with regard to past acts that have been taken in the civil case
12 with regard to the defense or future acts that we may take with
13 regard to these contested litigation casts an extraordinary
14 cloud of doubt and uncertainty and fear that the defense of
15 these cases could jeopardize Mr. Epstein and put him in the
16 irreparable position of violating the NPA and then subsequently
17 being indicted.

18 In this particular instance, again, Mr. Epstein has no
19 intention of willfully violating the NPA, but it's of great
20 concern to him. And I'd say with the position that the
21 Government has taken, no notice, no cure period, no opportunity
22 to discuss. Again, we think that's not what the NPA provides,
23 it's not what the deal was between the two contracting parties,
24 the United States and Mr. Epstein. But that's clearly what
25 their papers say under the circumstances, and it would create

1 this irreparable harm to Mr. Epstein under the circumstances.

2 In essence, we're left with a catch 22 in defending
3 the civil cases. We have a mandate to take no action, to take
4 any action which may be deemed to be a violation of the NPA,
5 either in the past or in the future, which would in any way
6 risk Mr. Epstein being indicted by the United States.

7 He has the clear risk of an indictment based upon the
8 papers that the Government filed. It's real, it's not remote,
9 and it's not speculative. It chills the action of the defense
10 in this instance of both Mr. Epstein and his attorneys in
11 trying to defend these cases and decide under the circumstances
12 can we do this, can we take this position with regard to
13 depositions, can we take this legal position with regard to
14 motions to dismiss, with regard to responses, with regard to
15 replies?

16 And we send out paper discovery. Is this in some way
17 if we contact someone who may be an associate of these
18 individuals as part of our investigation, is that potentially
19 in any way a violation of the NPA? Again, we don't think so.

20 And, obviously, again, my direction has been from my
21 client: Don't take any action that would result in me being
22 indicted under the NPA. Well, that's great. But, generally,
23 civil lawyers or civil lawyers in defending a personal injury
24 case or a tort case, which is exactly what these are, and from
25 a practical standpoint, we use various tools to do discovery.

1 They're standard. They're specific. They're very temporary.
2 Very typical.

3 But in this instance, as the Court knows, things are
4 not typical with regard to this case in any way, shape or form.
5 We can't even serve subpoenas, there's objections and there's
6 -- we can't even serve objections to third parties so we can
7 obtain documents unless we have to filter it through the
8 plaintiffs' attorneys. They won't allow us to use their
9 clients' names, even in a subpoena that would never be filed in
10 the court.

11 How do we do a deposition of a third party? We wanted
12 to take the deposition of Jane Doe 4. Well, who is she? Well,
13 we can't tell you that. Well, who's the defendant? Well, we
14 can't tell you that because nobody wants anybody to know
15 anything about the case. They want to present it strictly
16 through rose-colored glasses.

17 And in this particular instance, we simply can't
18 defend this case or take certain action with the spector
19 hanging over us that, in fact, the Government may deem it to be
20 a violation of the NPA, because very clearly in their response
21 papers, they don't say. They say we don't take the position,
22 and then they take a substantial position is we think there's
23 not all that substantial factors that would entitle him to a
24 stay.

25 Except for the one major issue which the Court posed

1 in the question is, is can he defend these cases? That's what
2 I really want to know. Can he defend these cases and, in
3 essence, what he has done in the past or what his defense team
4 has done in the past and what they're going to do in the
5 future, can you give him, Epstein, assurances that the
6 Government under this situation, whatever he does, based on
7 advice of counsel, that that cannot be a willful violation of
8 the NPA, which they can -- they, the U.S. -- can then turn
9 around and say that's a violation of the agreement and,
10 therefore, we're going to go proceed to indict you under the
11 circumstances.

12 Our position is, Your Honor, is that the U.S. has now
13 cavalierly suggested that, as they did in picking up on the
14 court's docket entry or prior order, is, look, compliance with
15 the NPA is solely up to Mr. Epstein. In this type of balance
16 of equities, it doesn't speak in favor of a stay.

17 Well, that's great. And maybe that was the position
18 back in '08, on August 5th of '08, when the issue came up in
19 front of the Court with regard to the initial stay.

20 But the Government's papers under these circumstances
21 suggested a very different set of circumstances. Their own
22 unilateral, which is the issue that we argued in the motion for
23 stay, is that the Government's position is that we can
24 unilaterally indict this man if we think he's breached the NPA.

25 We don't think that's right, but we have no buffer

1 between us and the Government. They'll say, and as the Court
2 knows, the Government has substantial power. The Government
3 does what it wants. Most of the time hopefully they're right.
4 Sometimes they make mistakes.

5 But in this particular instance, my client has rights.
6 We think that there's notice provisions, we think there's cure
7 provisions under the NPA. That's not what their paper says
8 under the circumstances.

9 And what we'd like to know from the Government, and
10 maybe the answer is basically what the Court asks is, let the
11 Government come forward today and say, based on the knowledge
12 that we have, or as of today's date, June 12th, 2009,, we, the
13 Government, agree that there is no set of circumstances, not
14 that we're not aware of, but as of today's date, there is
15 nothing that exists that would be a violation of the NPA.

16 THE COURT: Well, that's way beyond what I'm
17 interested in. I don't know what Mr. Epstein may have done
18 outside the context of defending this case that may constitute
19 a violation. And if he has done something outside the context
20 of defending this case that's a violation, I don't care.
21 That's between the United States and Mr. Epstein.

22 I'm only concerned about whether anything he does in
23 defending these civil actions is going to be a violation of the
24 non-prosecution agreement. If he has done something else, it's
25 none of my business, and I don't care, and I'm not going to

1 even ask the Government to give you an assurance that he hasn't
2 done anything that might have violated the agreement up till
3 today. I'm only interested in defending these civil actions.

4 MR. CRITTON: Then I would respectfully submit to the
5 Court that the Government be asked in that limited context, are
6 they as of today, whether there were or not, but as of today is
7 there anything that has been done or will you take the
8 position, the United States, that any position that Mr. Epstein
9 has taken with regard to defending these civil cases is in any
10 way a violation of the NPA?

11 THE COURT: Well, I'm not sure what they're going to
12 say, but that might -- that cures the problem up to this point.
13 But then we have to deal with what's going to happen from here
14 on in. And that's another issue that we have to deal with.

15 So I understand your position.

16 But has anyone suggested to you on behalf of the
17 United States that there is something that you've done in
18 defending this case that they believe may or could be construed
19 as a violation of the non-prosecution agreement? Has anyone
20 pointed to anything that you've done? For example, the fact
21 that you've wanted to take their -- I don't know if you've
22 noticed depositions or not in this case, but if you've sent
23 notice of taking deposition, if you sent requests for
24 production of documents, if you sent interrogatories, if you
25 issued third party subpoenas? Is anything you've done thus far

1 in the context of this case been brought to your attention as a
2 potential violation?

3 MR. CRITTON: I have received no notification nor am I
4 aware that we've received any notification of any action that
5 we have taken today. As I suggested to the Court, I don't know
6 when they've done or not. And in their papers they suggested,
7 well, we don't know everything that's gone on in the civil
8 litigation.

9 But from a practical standpoint, it was a number of
10 comments that were made in their papers is, we can indict, we
11 can see if there's a breach.

12 Judge, I may have some --

13 THE COURT: Before you go on.

14 MR. CRITTON: I'm sorry.

15 THE COURT: You've focused a great deal on the
16 Government's response to my inquiry as supporting your position
17 that you're in jeopardy. But you've made the suggestion, even
18 before this brief was filed, that defending the case was going
19 to potentially result in an assertion or allegation that you
20 breached the non-prosecution agreement.

21 So what was it that caused you to make that initial
22 assertion? Because that's what caught my attention, was not --
23 this brief that the Government has filed was in response to
24 something that you filed initially in your most recent motion
25 for a stay which raised the issue.

1 So what was it that gave you some concern to even
2 raise the issue that defending this case is going to constitute
3 a breach?

4 MR. CRITTON: Because there are other instances where
5 counsel other than myself, not in the civil aspects, where
6 allegations have been made and letters have been sent by the
7 United States suggesting that there's been a violation of the
8 NPA. And under those circumstances, some notification was
9 provided.

10 THE COURT: Did it have anything to do with defending
11 the civil actions?

12 MR. CRITTON: It did not.

13 THE COURT: So then why was that issue raised by you
14 in the first instance?

15 MR. CRITTON: Because of the prospect that the
16 defendant could take, that the U.S. would take the position
17 under the circumstances that a position that we took with
18 regard to the contested litigation may well impact, that the
19 Government may have a very different view of what the
20 interpretation of the agreement is.

21 And as an example is a number of the parties, and I
22 know the Court doesn't want to get into a discussion, the issue
23 is, is under 2255 is that from the defendant's perspective the
24 deal that was cut on that, it was a very specific deal. It
25 dealt with both consensual and contested litigation. It dealt

1 with a secret list of individuals who we had no idea who was on
2 the list, and a commitment that he would under certain
3 circumstances be required to pay a minimum amount of damages,
4 which our position is under 2255 based upon the statute that
5 was in effect at the time, a \$50,000 as to anyone who wanted --
6 who came forward who was on the list and met certain criteria.

7 The position that now has been asserted by a number of
8 the plaintiffs under the circumstances, and it's been pled, and
9 actually a number of the complainants is, is Epstein agreed,
10 and they cite to a letter that was sent by Ms. [REDACTED] from
11 the Government, that says he has to plead guilty or he can't
12 contest liability. That may be true under very, very limited
13 or specific circumstances.

14 But what the plaintiffs have done in a number of the
15 cases, and these are pending motions, is they've said is, well,
16 we think C.M.A. cases is a good example, they've pled 30
17 separate counts of 2255 alleged violations. And they're saying
18 under the circumstances is, therefore, we have 2255 violations,
19 there's 30 of them, so 30 times 150, or should be, or whether
20 it's 150, that's the amount of money that we want, so maybe \$15
21 million, or whatever the number is.

22 Some of the other plaintiffs' lawyers have been even
23 more creative. They've said is, well, we'll agree that it's
24 only one cause of action but that each number of violations;
25 that is, if 20 alleged incidents occurred, that we would

1 consider to be, or that we will argue are violations, then we
2 can take 20 times the 50, or the 150, depending on which
3 statute is applicable.

4 So the Government under that set of circumstance could
5 say, and, again, this is one of the reasons that we raised it,
6 they could say, look, our deal with you was that you couldn't
7 contest liability, that you were waiving liability, or your
8 ability to contest an enumerated offense under 2255.

9 Again, part of the deal was as to an enumerated
10 offense. Okay. Well, what's that mean? What did he plead to?
11 Well, he really didn't plead to anything, which is another
12 issue associated with the 2255. But if the Government comes in
13 and says, no, wait a minute, our position was, is that you're
14 stuck with 2255 and the language within the NPA. And,
15 therefore, whether it's an offense or whether it's multiple
16 offenses or violations or each one represents an individual
17 cause of action, if the Government takes the position that's
18 adverse to what we think the clear reading of the agreement was
19 under those circumstances, they could claim a violation.

20 And as a result -- and that's one of the reasons we
21 put -- that was the most glaring one to us, so we raised that
22 issue. And then when the Government's response came with
23 regard to, is we can just proceed to indict if we think that
24 there's been a breach of the agreement.

25 That puts us at substantial risk and chills our

1 ability to move forward. Thank you, Your Honor.

2 THE COURT: Thank you. Who wants to be heard from the
3 plaintiffs first?

4 Is there any plaintiff's attorney who is contending
5 that the defense of these civil actions by Mr. Epstein is going
6 to constitute a breach of the non-prosecution agreement?

7 MR. JOSEFSBERG: Your Honor, this is Bob Josefsberg.
8 May I speak?

9 THE COURT: Yes, sir.

10 MR. JOSEFSBERG: We're not quite confident that any
11 breaches of any agreement, which were third-party
12 beneficiaries, should be resolved by you. We're not saying it
13 shouldn't. But we have not raised any breach of agreement. We
14 think that is between the United States and Mr. Epstein.

15 What I find incredulous and disingenuous is that
16 Mr. Epstein is saying that he wants a stay because he may be
17 forced into taking actions in the defense of this case that
18 would violate the agreement.

19 And let me make our position clear on that. If he
20 wants to move to take depositions, interrogatories, production,
21 and they are according to your rulings appropriate, not
22 invasive of the privacy of someone, and they are relevant, then
23 I don't know how those could in any way be violations of the
24 agreement.

25 What I find hypocritical is that there are two parts

1 to the agreement that I am a beneficiary of. One of them is
2 that he has agreed that on any action brought in the 2255, he
3 will admit to liability.

4 And I received on May 26 a motion to dismiss, which
5 we're prepared to respond to and disagree with, but totally
6 contesting liability, saying that the statute doesn't apply
7 because the girls are no longer minors and saying, and this is
8 the great one, saying that the predicate of the conviction
9 under 2255 has not been satisfied.

10 Now, the understanding that I have is the agreement
11 between the Government and Mr. Epstein was that the Government
12 desired to see these victims made whole, and wanted them to be
13 in the same position as if Mr. Epstein had been prosecuted and
14 pled or convicted. And they would be able to have the
15 predicate of that criminal conviction, which just as a matter
16 of liability would just be introduced as proof that he's done
17 this.

18 They, under the agreement, are supposed to admit to
19 liability on limited something that's under 2255. He has
20 filed, but since there is no conviction, there can be no civil
21 suit under 2255, with which we disagree. But it is totally in
22 opposite of the NPA.

23 The second part is there are many young ladies, and
24 this perhaps he can use this to his great advantage, who are
25 humiliated about this entire situation. Some of them won't

1 come forward.

2 We were appointed by Judge Davis as a Special Master
3 to represent these young ladies. And some of them don't even
4 want to file suit. They don't even want to be known as Jane
5 Doe 103. They don't want any of the risks for these motions
6 that are pending.

7 And part of the agreement was that if we represented
8 them and they settle, Mr. Epstein would pay our fees. And he
9 has written us as of yesterday that he is under no obligation
10 to pay our fees on settling cases.

11 Now, those two matters, I believe, may be breaches.
12 But I am not asking this Court at this time to do anything
13 about them. Nor am I telling the Government, I'm not running
14 to the Government and saying indict him because I want you to
15 pressure him to do what he agreed to.

16 I'm a third-party beneficiary for that agreement, and
17 I may move to enforce certain parts of it. But as far as the
18 issue of staying the litigation, that is the exact opposite of
19 the intent and the letter of the NPA. The purpose of the NPA
20 was so that these 34 young ladies, these victims who have been
21 severely traumatized, may move on with their lives.

22 And to stay this action would be the exact opposite of
23 the purpose of that agreement and would be horrible
24 psychologically for all of my clients.

25 THE COURT: Mr. Josefsberg, I understand your

1 position. And I don't want to argue the merits of whether a
2 stay should or should not be granted.

3 I'm just trying to understand what the ground rules
4 are going to be if I grant a stay or if I deny a stay. And
5 I've already denied a stay once. I have to decide this current
6 motion, and I just want to know what is going to happen if I
7 deny the stay in terms of Mr. Epstein's exposure under the
8 non-prosecution agreement. That's my concern.

9 So if you're telling me that you're not going to urge
10 the United States, on behalf of any of your clients, to take
11 the position that he's breached the agreement because he's
12 taking depositions, because he's pursuing discovery, because
13 he's conducting investigations that anyone in any other type of
14 civil litigation might conduct with respect to plaintiffs that
15 are pursuing claims against a defendant, that those typical
16 types of actions, in your judgment, are not breaches of the
17 agreement and that he can go forward and defend the case as any
18 other defendant could defend, and you're not going to run to
19 the United States and say, hey, he's breaching the agreement by
20 taking depositions and he's breaching the agreement by issuing
21 subpoenas to third parties in order to gather information
22 necessary to defend, then I don't have a problem. But if he's
23 going to be accused of breaching the agreement because he sends
24 out a notice of deposition of one of your clients, how is he
25 supposed to defend the case?

1 MR. JOSEFSBERG: Your Honor, you're totally correct.
2 He can depose my client. That's not a problem. But the
3 problem is that these are not typical clients and this is not a
4 typical case. He has written in his pleadings that he wants to
5 publish the names of these girls in the newspapers so that
6 other people may come forward to discuss their sexual
7 activities with these different plaintiffs. That's not your
8 typical case. But are rulings that you'll make in this case,
9 and they're not part of the NPA.

10 As far as my going to the Government is concerned, I
11 find it very uncomfortable for me to use the Government to try
12 to pursue my financial interest in litigation. And I know that
13 Mr. Epstein and his counsel will make much ado about it. So I
14 am not going to be running there.

15 However, if they start taking depositions regarding
16 liability, I will consider that to be a breach because they're
17 supposed to have admitted liability.

18 THE COURT: But, again, I don't have the agreement and
19 I don't remember reading the agreement. But what I'm being
20 told is the part of the agreement that admits liability is only
21 as to a 2255 claim, and there are numerous other personal
22 injury tort claims other than 2255 claims.

23 And there's a limit of damages on the 2255 claim, as I
24 understand it, but I presume that all the plaintiffs are going
25 to seek more than the limited or capped amount of damages in

1 the non-prosecution agreement as to the other claims.

2 And so why aren't they entitled to defend and limit
3 the amount of damages that your client is seeking on the
4 non-2255 tort claims?

5 MR. JOSEFSBERG: Your Honor, you are correct. On
6 non-2255 tort claims, they are permitted to do the defense,
7 whatever is appropriate.

8 My cases are pure 2255 on which liability under the
9 agreement is supposed to be admitted. Now, as to the amount of
10 damages, there are legal issues that will be before you and
11 under the C.M.A. cases that are getting before you, as to
12 whether it is 50 or 150. That has nothing to do with the NPA.

13 There are legal issues that are before you as to
14 whether it is per statute, per count, or per incident or per
15 plaintiff. Those have nothing to do with the NPA. There is no
16 amount in NPA. Those will be resolved.

17 Anyone who has brought a case that is outside of 2255,
18 the defense is permitted to contest liability under the NPA.
19 That's no violation.

20 Under the NPA if someone brought a case under just
21 2255, Mr. Epstein, if he is to keep his word, cannot contest
22 liability. And there would no need to stay this. Because it
23 is a self-fulfilling agreement. He can contest liability. And
24 as far as the amount of damages, anyone that wants to go over
25 the statutory minimums, of course, he can contest that in any

1 way that is proper under the Rules of Evidence and your
2 rulings. The NPA has no limitation on his contesting damages
3 above the minimum statutory amount.

4 The only thing that he has done is in his actions of
5 refusing to pay for settling defendants, and in his saying that
6 he has no liability under 2255, those appear to be contrary to
7 what's in the NPA.

8 But I'm not in any position right now to claim a
9 breach, and I don't know whether I'd be claiming a breach or
10 enforcing it in front of you, suing him for fees, asking you to
11 have him admit liability, or complaining to the Government.
12 And that's why I'm not that helpful in this situation because I
13 think it's the Government's role.

14 But I do not waive the right to be a third-party
15 beneficiary because pursuant to my appointment, which was
16 agreed to by Mr. Epstein, I and my clients have certain rights,
17 and we want to enforce them.

18 But his defending this lawsuit will not in any way be
19 a violation. His getting this lawsuit stayed would be a
20 violation of the spirit of taking care of these girls, and
21 there would be other issues. Like if there is a stay, Your
22 Honor, would he be posting a bond?

23 THE COURT: We don't need to talk about those issues.
24 That's not my concern.

25 MR. JOSEFSBERG: I agree, Your Honor, we don't.

1 THE COURT: That's not my concern. So, again, I just
2 want to make sure that if the cases go forward and if
3 Mr. Epstein defends the case as someone ordinarily would defend
4 a case that's being prosecuted against him or her, that that in
5 and of itself is not going to cause him to be subject to
6 criminal prosecution.

7 MR. JOSEFSBERG: I agree, Your Honor.

8 THE COURT: Any other plaintiff's counsel want to
9 chime in?

10 MR. WILLITS: Richard Willits on behalf of C.M.A.. I
11 would join, to weigh in on what Mr. Josefsberg said.

12 MR. JOSEFSBERG: Your Honor, I could not hear.

13 THE COURT: We'll get him to a microphone.
14 Mr. Willits is speaking.

15 MR. WILLITS: On behalf of my client, C.M.A., we join
16 in what Mr. Josefsberg said, and we also want to point out
17 something to the Court.

18 First, we want to make a representation to the Court,
19 we have no intention of complaining to the U.S. Attorney's
20 Office, never had that intention, don't have that intention in
21 the future, but, of course, subject to what occurs in the
22 future.

23 I want to point out to the Court that Mr. Epstein went
24 into this situation with his eyes wide open, represented by
25 counsel, knowing that civil suits had to be coming. If he

1 didn't know it, his lawyers knew it.

2 He appears to be having second thoughts now about he
3 could have negotiated this way or he could have negotiated that
4 way with the U.S. Attorney's Office. And they want to impose
5 their second thoughts on the innocent plaintiffs. We don't
6 think that's fair. We think it's in the nature of invited
7 error, if there was any error whatsoever.

8 Thank you.

9 THE COURT: You agree he should be able to take the
10 ordinary steps that a defendant in a civil action can take and
11 not be concerned about having to be prosecuted?

12 MR. WILLITS: Of course. And we say the same thing
13 Mr. Josefsberg said. It's all subject to your rulings and the
14 direction of this Court as to what is proper and what is not
15 proper. And we're prepared to abide by the rulings of this
16 Court, and we have no intention of running to the State's
17 Attorney.

18 THE COURT: The U.S. Attorney?

19 MR. WILLITS: I'm sorry. The U.S. Attorney.

20 THE COURT: Mr. Garcia.

21 MR. GARCIA: Thank you, Your Honor.

22 If I may briefly, I think perhaps defense counsel
23 forgot about this, but on pages 17 and 19 of my memorandum of
24 law in opposition to the motion to dismiss, I did make
25 reference to the non-prosecution agreement, and I did say that

1 the contesting of the jurisdiction of this Court was a
2 potential breach of the non-prosecution agreement.

3 So my client happens to have, and they have filed with
4 the Court a copy of her state court complaint, given the fact
5 that the non-prosecution agreement limits the non-contesting of
6 jurisdiction to claims exclusively brought under the federal
7 statute.

8 I'm going to go ahead and withdraw those contentions
9 on pages 17 and 19 of my memo of law because it doesn't apply
10 to my case. So to the extent that I raised this issue with
11 defense counsel and the Court, I'm going to withdraw that
12 aspect of it.

13 THE COURT: Can you file something in writing on that
14 point with the Court?

15 MR. GARCIA: Yes.

16 THE COURT: What do you say about this issue that
17 we're here on today?

18 MR. GARCIA: I think that the problem that I have with
19 it is that this non-prosecution agreement is being used by
20 defense counsel for the exact opposite purpose that it was
21 intended. My perception of this thing, and I wasn't around, is
22 that Mr. Epstein essentially bought his way out of a criminal
23 prosecution, which is wonderful for the victims in a way, and
24 wonderful for him, too.

25 Now he's trying to use the non-prosecution agreement

1 as a shield against the plaintiffs that he was supposed to make
2 restitution for.

3 And, certainly, he can take my client's depo. He's
4 done extensive discovery in the state court case -- very
5 intrusive, I might add. And we don't care, because we can win
6 this case with the prosecution agreement or without the
7 prosecution agreement. We are ready to go forward.

8 THE COURT: You're not going to assert to the United
9 States Government that what he's doing in defending the case is
10 a violation for which he should be further prosecuted?

11 MR. GARCIA: Absolutely not.

12 THE COURT: Anyone else for the plaintiffs?

13 MR. HOROWITZ: Judge, Adam Horowitz, counsel for
14 plaintiffs Jane Doe 2 through 7.

15 I just wanted to address a point that I think you've
16 articulated it. I just want to make sure it's crystal clear,
17 which is that we can't paint a broad brush for all of the
18 cases.

19 The provision relating to Mr. Epstein being unable to
20 contest liability pertains only to those plaintiffs who have
21 chosen as their sole remedy the federal statute. My clients,
22 Jane Doe 2 through 7, have elected to bring additional causes
23 of action, and it's for that reason we were silent when you
24 said does anyone here find Mr. Epstein to be in breach of the
25 non-prosecution agreement. That provision, as we understand

1 it, it doesn't relate to our clients.

2 THE COURT: Okay. But, again, you're in agreement
3 with everyone else so far that's spoken on behalf of a
4 plaintiff that defending the case in the normal course of
5 conducting discovery and filing motions would not be a breach?

6 MR. HOROWITZ: Subject to your rulings, of course,
7 yes.

8 THE COURT: Thank you.

9 Anyone else have anything to say from the plaintiffs?

10 Ms. [REDACTED], if you would be so kind as to maybe
11 help us out. I appreciate the fact that you're here, and I
12 know you're not a party to these cases and under no obligation
13 to respond to my inquiries. But as I indicated, it would be
14 helpful for me to understand the Government's position.

15 MS. [REDACTED]: Thank you, Your Honor. And we, of
16 course, are always happy to try to help the Court as much as
17 possible. But we are not a party to any of these lawsuits, and
18 in some ways we are at a disadvantage because we don't have
19 access. My access is limited to what's on Pacer. So I don't
20 really know what positions Mr. Epstein may have taken either in
21 correspondence or in discovery responses that aren't filed in
22 the case file.

23 But your first order was really just what do you think
24 about a stay, and then the second order related to this hearing
25 and asked a much more specific question, which is whether we

1 believe that Mr. Epstein's defense was a breach of the
2 agreement.

3 And I've tried to review as many of the pleadings as
4 possible. As you know, they're extremely voluminous. And I
5 haven't been through all of them. But we do believe that there
6 has been a breach in the filing that Mr. Josefsberg referred
7 to, and contrary to Mr. Critton, we do understand that we have
8 an obligation to provide notice, and we are providing notice to
9 Mr. Epstein today.

10 The pleading that we found to be in breach -- the
11 non-prosecution agreement, sought to do one thing, which was to
12 place the victims in the same position they would have been if
13 Mr. Epstein had been convicted of the federal offenses for
14 which he was investigated.

15 And that if he had been federally prosecuted and
16 convicted, the victims would have been entitled to restitution,
17 regardless of how long ago the crimes were committed,
18 regardless of how old they were at the time, and how old they
19 are today, or at the time of the conviction.

20 And it also would have made them eligible for damages
21 under 2255.

22 And so our idea was, our hope was that we could set up
23 a system that would allow these victims to get that restitution
24 without having to go through what civil litigation will expose
25 them to.

1 You have a number of girls who were very hesitant
2 about even speaking to authorities about this because of the
3 trauma that they have suffered and about the embarrassment that
4 they were afraid would be brought upon themselves and upon
5 their families.

6 So we did through the non-prosecution agreement tried
7 to protect their rights while also protecting their privacy.
8 So, pursuant to the non-prosecution agreement -- on the other
9 hand, we weren't trying to hand them a jackpot or a key to a
10 bank. It was solely to sort of put them in that same position.

11 So we developed this language that said if -- that
12 provided for an attorney to represent them. Most of the
13 victims, as you know from the pleadings, come from not wealthy
14 circumstances, may not have known any attorneys who would be in
15 a position to help them.

16 So we went through the Special Master procedure that
17 resulted in the appointment of Mr. Josefsberg, and the goal was
18 that they would be able to try to negotiate with Mr. Epstein
19 for a fair amount of restitution/damages. And if Mr. Epstein
20 took the position, which apparently he has, which is that the
21 \$50,000 or \$150,000 floor under 2255 also would be a cap. That
22 if they were to proceed to file suit in Federal Court to get
23 fair damages under 2255, Mr. Epstein would admit liability, but
24 he, of course, could fight the damages portion, which means
25 that, of course, he would be entitled to depositions; of

1 course, he would be entitled to take discovery, and we don't
2 believe that any of that violates the non-prosecution
3 agreement.

4 The issue with the pleading that he filed, the motion
5 to dismiss the case, I believe it's Jane Doe 101, represented
6 by Mr. Josefsberg, is that that is a case that was filed
7 exclusively under 18 U.S.C., Section 2255. She met that
8 requirement. Mr. Epstein is moving to dismiss it, not on the
9 basis of damages, he is saying that he cannot be held liable
10 under 2255 because he was not convicted of an offense.

11 The reason why he was not convicted of an offense is
12 because he entered into the non-prosecution agreement. So that
13 we do believe is a breach.

14 The issue really that was raised in the motion to stay
15 and that I addressed in our response to the motion to stay is
16 that Mr. Epstein's -- Mr. Epstein wants to stay the litigation
17 in order to leave, in order to sort of attack the cases of the
18 victims whether they are fully within the non-prosecution or
19 not, non-prosecution agreement or not, and leave the Government
20 without a remedy if he does, in fact, breach those terms. And
21 that is why we opposed the stay.

22 THE COURT: I'm not sure what you mean by that last
23 statement.

24 MS. [REDACTED]: Well, because this issue related to
25 the motion to dismiss on Mr. Josefsberg's client came up after

1 we had filed that response. And what we said in the response
2 to the motion to stay is that the reason why he wants to stay
3 the litigation is so that the non-prosecution agreement
4 terminates based on a period of time, as he puts it. And then
5 afterwards he would be able to come in here and make all of
6 these arguments that clearly violate the non-prosecution
7 agreement but we would be without remedy.

8 THE COURT: But you're not taking the position that
9 other than possibly doing something in litigation which is a
10 violation of an express provision of the non-prosecution
11 agreement, any other discovery, motion practice, investigations
12 that someone would ordinarily do in the course of defending a
13 civil case would constitute a violation of the agreement?

14 MS. [REDACTED]: No, Your Honor. I mean, civil
15 litigation is civil litigation, and being able to take
16 discovery is part of what civil litigation is about. And while
17 there may be, for example, if someone were to try to subpoena
18 the Government, we would obviously resist under statutory
19 reasons, all that sort of stuff. But, no, Mr. Epstein is
20 entitled to take the deposition of a plaintiff and to subpoena
21 records, etc.

22 THE COURT: And even if he seeks discovery from a
23 Government agency, you have the right to resist it under the
24 rules of procedure but that would not constitute a violation,
25 again unless there's a provision in the prosecution agreement

1 that says I can't do this?

2 MS. [REDACTED]: Correct.

3 THE COURT: That's your position?

4 MS. [REDACTED]: Yes.

5 THE COURT: Thank you.

6 MS. [REDACTED]: Thank you, Your Honor.

7 THE COURT: Mr. Critton, did you want to add anything?

8 MR. CRITTON: Yes, sir. Just a few responses to some
9 of the issues that have been raised.

10 The most glaring, at least from our perspective, is
11 both Mr. Josefsberg's comments that he believes that there's a
12 violation of the NPA as well as Ms. [REDACTED] with regard to
13 Jane Doe 101.

14 Mr. Josefsberg, while he was the attorney rep who was
15 selected by Judge Davis to represent a number of individuals,
16 alleged victims that may have been on the list, he represents
17 many of them. And the type of response that was filed in 101
18 would probably be very similar to what we will file if he
19 files -- and he filed 102 as well. But if he files 103, 104
20 and 105, or whatever number he files, we may well take that
21 same legal position in our motions and in our response or in
22 reply.

23 And what we've been, in essence, told today is we
24 consider that to be a violation of the NPA under the
25 circumstances.

1 102 is a perfect example that he filed is, we have
2 e-mails going back and forth between the Government and my
3 clients' attorneys at the time that suggested that 102 probably
4 doesn't even fit within the statute of limitations.

5 So under Mr. Josefsberg's argument is as well, we've
6 only brought a 2255 claim. We don't care whether she's within
7 or is outside the statute of limitations. Because she was on
8 the list and under the circumstances, he has to admit
9 liability, which we contest is under that set of circumstances
10 you're stuck with it. You can fight damages if you can, but
11 she's a real person and you can't raise statute of limitations.

12 The other point that kind of strikes out is there's
13 probably a difference. And I'm happy to provide a copy of the
14 NPA or a redacted portion of the NPA which deals with the civil
15 issues, which are paragraphs 7, 8, 9 and 10, and the entire
16 addenda in camera for the Court to look at, if plaintiff's
17 counsel and the Government, I guess, really, because they're
18 not a party, is if they have no objection because they all have
19 access based on a prior court order to the non-prosecution
20 agreement.

21 So I'm happy to provide that to the Court today and
22 show it to counsel so that the Court can review that.

23 But our position with regard to the 2255 claims is
24 that -- there were two types of claims that could be filed, one
25 was consensual litigation, the second was contested litigation.

1 And under the consensual, in essence, which Mr. Epstein did, is
2 he's offered \$50,000 of the statutory minimum for that time
3 period to all of those individuals.

4 THE COURT: Can I interrupt you a second?

5 MR. CRITTON: Yes, sir.

6 THE COURT: I'm not here, and I don't believe it's my
7 role to decide whether or not there is or is not a breach of
8 the agreement. I'm just trying to understand what the
9 Government's position is regarding your defending these cases.

10 Now, I'm just saying this as an example. If, for
11 example, in the non-prosecution agreement there was a provision
12 that said explicitly: Jeffrey Epstein shall not move to
13 dismiss any claim brought under 2255 by any victim no matter
14 how long ago the allegations or the acts took place, period.

15 If that was in the agreement and you filed a motion to
16 dismiss by someone who brought a claim, it might sound like it
17 might be a violation.

18 MR. CRITTON: I agree.

19 THE COURT: So you would know that when you filed your
20 motion because it was right there for you to read.

21 And so to stay the case because I want to do something
22 that the contract expressly prohibits me from doing, so stay
23 the case until the agreement expires so then I can do something
24 that the agreement said I couldn't do so you won't be in fear
25 of prosecuting, I'm not sure that that is what I'm concerned

1 about.

2 I'm concerned about discovery, investigation, motion
3 practice, that's not prohibited by a provision of the
4 agreement. If there's something that's prohibited by the
5 agreement that you, knowing what the agreement says, go ahead
6 and do, anyway, I guess that's a risk you're going to have to
7 take. If there's a legitimate dispute about it, I guess some
8 arbiter is going to decide whether it's a breach or not.

9 But, again, that's something you and Mr. Burman,
10 Mr. Goldberger, and you are all very good lawyers, and he's got
11 a whole list of lawyers representing him, and you've got the
12 agreement and you're going to make legal decisions on how to
13 proceed, and you're going to have to go and make your own
14 decisions.

15 I'm concerned about things that aren't in the
16 agreement, that aren't covered, that you're going to be accused
17 of violating because, again, you take depositions, you send out
18 subpoenas, you file motions that are not prohibited by the
19 agreement. And that's what I'm concerned about.

20 MR. CRITTON: And I understand that, Your Honor.

21 But at the same time, it's as if the lawyers and the
22 clients, based upon our interpretation of the agreement, and,
23 believe me, we would not have filed 101, the motion to dismiss,
24 but for believing that there was a good faith basis to do that
25 under the circumstances.

1 And now, in essence, we're being accused not only by
2 -- not accused, but it's been suggested that there's a breach
3 of the NPA, not only by Mr. Josefsberg on behalf of 101, but as
4 well Ms. [REDACTED] on behalf of the United States.

5 That's the perfect example. They're basically saying
6 we think you violated. We may send you notice under the
7 circumstances. So does that mean that on 101 we have to back
8 off of it because we think in good faith that it's a motion and
9 is that something that this Court ultimately will rule?

10 THE COURT: I don't know that I'm the one who is going
11 to make that decision. Again, that's not the kind of thing
12 that I was concerned about. I was more concerned about the
13 normal, ordinary course of conducting and defending a case that
14 would not otherwise expressly be covered under the agreement,
15 that you're going to then have someone say, ah, he's sent a
16 notice of deposition, he's harassing the plaintiffs. I don't
17 know if there's a no contact provision in the agreement or no
18 harassment type of provision in the agreement. Ah, this is a
19 breach because you sent discovery, or he's issuing subpoenas to
20 third parties trying to find out about these victims'
21 backgrounds, he's breaching the agreement.

22 Those are the kind of things that I was worried about.

23 MR. CRITTON: The concern that we have is as part of
24 doing this general civil litigation, it's not just the
25 discovery process. And I understand the issues that the Court

1 has raised.

2 But part of it is that often cases are disposed of
3 either on a summary basis or certainly legal issues that come
4 before the Court during the course of the case, just like in a
5 criminal case. That's clearly part of the, I'd say the defense
6 of the case under the circumstances; and if, in fact, an
7 individual can't legally bring a cause of action for certain
8 reasons, such as has been suggested in 101, and may be
9 suggested in 102 when that pleading is filed, that certainly is
10 a position that puts my client at risk.

11 As another example that I use with C.M.A., that they
12 filed this 30-count complaint. Now, they have the state court
13 claims as well. But they, in essence, have said they filed
14 another pleading with the Court that says depending on what the
15 Court rules, in essence, on whether we can file multiple claims
16 or one cause of action with multiple violations, we may dump
17 the state court claims and, therefore, we'll just ride along on
18 that. That's a very different --

19 Mr. Epstein would never have entered into, nor would
20 his attorneys have allowed him to enter into that agreement
21 under those circumstances where he had this unlimited
22 liability. That clearly was never envisioned by any of the
23 defendants -- by the defendant or any of his lawyers under the
24 circumstances.

25 And if that's claimed to be a violation, either by the

1 attorneys; i.e., he's not recapitulating on liability under the
2 2255, and that's all we have now. That's our exclusive remedy.

3 And the Government says, yeah, that's right, that's a
4 violation of the NPA. It again chills us from moving forward,
5 filing the necessary motion papers and taking legal positions
6 that may put my client at risk for violating the NPA and then
7 creating the irreparable harm of, after having been in jail,
8 after having pled guilty to the state court counts, after
9 registering on release as a sex offender, he's complied and
10 done everything, taken extraordinary efforts to comply with the
11 NPA, puts him at substantial risk. And that's what our worry
12 is moving forward.

13 MR. JOSEFSBERG: Your Honor, may I be heard. May I
14 make three comments? It will take less than a minute.

15 THE COURT: Yes, sir.

16 MR. JOSEFSBERG: Mr. Critton refers to the alleged
17 victims. I want you to know that our position is that pursuant
18 to the NPA they're not alleged victims. They are actual, real
19 victims, admitted victims.

20 Secondly, he argues about the statute of limitations
21 on 102. I know that you don't want to hear about that, and I'm
22 not going to comment about it. But please don't take our lack
23 of argument about this as being we agree with anything.

24 Last and most important, we totally agree with
25 Mr. Critton in his suggestion that he hand you a copy of the

1 NPA. I think that many of the questions you asked will be
2 answered when you read the NPA, and I think it's very unfair of
3 everyone who is sitting in front of you who have the NPA to be
4 discussing with you whether it's being breached, whether there
5 should be a stay when you're not that familiar with it.

6 If we would give you a copy of it, I think it would be
7 much more helpful in making your ruling.

8 THE COURT: Maybe Judge Colvat will resolve this issue
9 for me.

10 MR. JOSEFSBERG: Even if he doesn't, Your Honor, I
11 believe we are allowed to show it to you.

12 THE COURT: I'll tell you what: I'll wait for Judge
13 Colvat to rule, and then if he rules that it should remain
14 sealed, then I'll consider whether or not I want to have it
15 submitted to me in camera.

16 Anything else, Mr. Josefsberg?

17 MR. JOSEFSBERG: No. I thank you on behalf of myself
18 and the other counsel on the phone for permitting us to appear
19 by phone.

20 THE COURT: All right. Anyone else have anything they
21 want to add?

22 MR. EDWARDS: Brad Edwards on behalf of Jane Doe.

23 I only had one issue here, and when I read your motion
24 that you wanted to hear on the narrow issue of just defense in
25 the civil actions filed against him violates the

1 non-prosecution agreement, I was expecting that we were going
2 to hear something from the Government similar to the affidavit
3 that was filed by Mr. Epstein's attorneys wherein he indicates
4 as of the day of this affidavit attached to the motion to stay,
5 the U.S. Attorney's Office has taken the position that Epstein
6 has breached the non-prosecution agreement and it names
7 specifically investigation by Epstein of this plaintiff and
8 other plaintiffs, Epstein's contesting damages in this action.
9 Epstein, or his legal representatives, making statements to the
10 press. And we didn't hear any of those things.

11 So that's what I was expecting that the U.S.
12 Attorney's Office was going to expound on and say, yes, we've
13 made some communications to Epstein. He's violating.

14 What we're hearing right now, today, just so that I'm
15 clear, and I think the Court is clear now, is that the
16 non-prosecution agreement is what it is. There have been no
17 violations, but for maybe what Mr. Josefsberg brought up.

18 But there are very few restrictions on Mr. Epstein.
19 He went into this eyes wide open. And whether or not I agree
20 with the agreement, how it came to be in the first place, is
21 neither here nor there.

22 But there have been no violations or breaches up to
23 this point. And his affidavit that was filed, I'm just
24 troubled by where it even came from. I mean, it's making
25 specific allegations that the U.S. Attorney's Office is

1 threatening a breach, and this is part of the motion to stay,
2 which we're all battling here.

3 So I just wanted to indicate to the Court or remind
4 the Court that there have been specific allegations made, the
5 United States Attorney's Office is making these allegations of
6 breach, which we haven't heard any of the evidence of.

7 Thank you.

8 THE COURT: All right.

9 Ms. [REDACTED], did you want to respond to that
10 suggestion that there were other allegations of breach besides
11 the one that you've just mentioned today?

12 MS. [REDACTED]: No, Your Honor.

13 THE COURT: Thank you. I appreciate your giving me
14 the information, which I think has been very helpful today, and
15 I'll try and get an order out as soon as possible.

16 [Court adjourned at 11:10 a.m.].

17 C E R T I F I C A T E

18 I hereby certify that the foregoing is an accurate
19 transcription of proceedings in the above-entitled matter.

20

s/Larry Herr

21

DATE

LARRY HERR, RPR-CM-RMR-FCRSC

22

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DeFense

Filed by <u>DW</u> D.C. ELECTRONIC July 18, 2008 STEVEN M. LARIMORE CLERK U.S. DIST. CT. S. D. OF FLA. - MIAMI
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UNITED STATES DISTRICT COURT
 SOUTHERN DISTRICT OF FLORIDA
08-80804-Civ-MARRA/JOHNSON

CASE NO.: _____

JANE DOE,
 a/k/a JANE DOE #1,

Plaintiff,

vs.

JEFFREY EPSTEIN, [REDACTED]
 and [REDACTED]

Defendants.

NOTICE OF REMOVAL

In accordance with 28 U.S.C. §§ 1441, 1446, and 1332(a)(1), the defendants, Jeffrey Epstein, [REDACTED], and [REDACTED], hereby remove this action¹ from Palm Beach County Circuit Court to the United States District Court for the Southern District of Florida, and respectfully state as follows:

Introduction

Six months ago, this plaintiff filed virtually the identical lawsuit in this Court. See *Jane Doe #1 v. Epstein*, Case No. 08-cv-80069-KAM (S.D. Fla. filed

¹ *Doe v. Epstein et al.*, Case No. 50 2008 CA 006596 XXXX MB (Fla. 15th Cir. Ct. filed Mar. 6, 2008).

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redacted, is attached hereto (Exhibit A). Two days later, counsel for Jane Doe #1 filed a notice of voluntary dismissal without prejudice in the First Federal Action. *See Doe #1 v. Epstein*, Case No. 08-CV-80069-KAM, DE 9.

Two weeks later (March 6, 2008), having changed lawyers, Jane Doe #1 refiled her complaint in Florida Circuit Court as the instant case, adding two nominal defendants: [REDACTED], Mr. Epstein's personal secretary, and [REDACTED], one of Jane Doe #1's contemporaries. These defendants have nothing to do with the plaintiff's case against Mr. Epstein, except that the presence of [REDACTED] as a defendant in this new case, because she is a citizen of Florida (Am. Compl. ¶ 4), would ostensibly prevent complete diversity.²

As discussed below, however, [REDACTED] was named in the refiled lawsuit only to destroy diversity jurisdiction, and to prevent any application of 18 U.S.C. § 3509(k), a mandatory stay provision applicable in federal court.³ Haley

² Defendant Kellen is a citizen of New York (Am. Compl. ¶ 5), and is therefore a nonresident defendant for purposes of diversity jurisdiction and removal.

³ Section 3509(k) of Title 18, United States Code, provides as follows:

If, at any time that a cause of action for recovery of compensation for damage or injury to the person of a child exists, a criminal action is pending which arises out of the same occurrence and in which the child is the victim, *the civil action shall be stayed until the end of all phases of the criminal action* and any mention of the civil action during the criminal proceeding is prohibited. As used in this subsection, a criminal action is pending until its final adjudication in the trial court.

Doe” lawsuits presently pending against Epstein, filed by this plaintiff’s former lawyer.

This case is properly removed to federal court, *first*, because there is complete diversity among the real parties-in-interest, *second*, because the amount in controversy exceeds \$75,000, and *third*, because this Notice complies with the requirements of 28 U.S.C. § 1446.

Discussion

A. This case is properly removable because it falls within the original jurisdiction of the United States District Court for the Southern District of Florida.

A state-court case is properly removable when “it could have been brought, originally, in a federal district court.” *Lincoln Prop. Co. v. Roche*, 546 U.S. 81, 83 (2005) (*citing* 28 U.S.C. § 1441(a)). This case *was* originally filed in federal district court, and it is the same case today. Even though it was reconfigured to *look like a state-court lawsuit*, this action falls squarely within the bounds of the diversity-jurisdiction statute. *See* 28 U.S.C. § 1332(a)(1) (establishing that federal district courts have original jurisdiction over cases where the amount in controversy [is more than \$75,000] . . . and [when the controversy] is between citizens of different states”).

To cement this point, the Eleventh Circuit Court of Appeals has said that “[w]hen [a] complaint does not claim a specific amount of damages, removal from state court is proper if it is facially apparent from the complaint that the amount in controversy exceeds the jurisdictional requirement.” *Williams v. Best Buy Co., Inc.*, 269 F.3d 1316, 1319 (11th Cir. 2001). This case meets that standard, and satisfies the first prong of diversity jurisdiction.

2. There is complete diversity among the real parties to this controversy.

Diversity jurisdiction requires complete diversity. *Carden v. Arkoma Assocs.*, 494 U.S. 185, 187 (1990) (“Since its enactment, we have interpreted the diversity statute to require ‘complete diversity’ of citizenship.” (citing *Strawbridge v. Curtiss*, 7 U.S. (3 Cranch) 267, 267–68 (1806))). See also *MacGinnitie v. Hobbs Group, LLC*, 420 F.3d 1234, 1239 (11th Cir. 2005) (stating that “[c]omplete diversity requires that no defendant in a diversity action be a citizen of the same state as any plaintiff”). As demonstrated below, this case satisfies the statutory requirement of complete diversity.

(a) Plaintiff Jane Doe is a citizen of Florida. (Am. Compl. ¶ 1.)⁶

⁶ Jane Doe may, in fact, be a citizen of *Georgia*, not Florida, as she pled in her Amended Complaint. See *New York Post*, Jul. 1, 2008 (reporting that “On his way into court [for his state-court guilty plea on June 30], Epstein was served with a copy of a lawsuit by Doe, *who has since moved to another state.*”); Jane Doe Depo. at 77, 112 (indicating that

Oct. 15, 2007) (Moreno, J.) (*citing Riley v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 292 F.3d 1334, 1337 (11th Cir. 2002)); *accord, e.g., Tedder v. F.M.C. Corp.*, 590 F.2d 115, 117 (5th Cir. 1979) (denying motion to remand where two resident defendants were joined for the fraudulent purpose of defeating federal jurisdiction). In this case, the plaintiff relies on her original allegations to support three causes of action against [REDACTED]: civil conspiracy (Am. Compl. ¶¶ 20–23); Intentional Infliction of Emotional Distress (Am. Compl. ¶¶ 23–28); and civil RICO (Am. Compl. ¶¶ 29–34). These allegations, however, do not support these claims, or any other theory of liability that would allow recovery against [REDACTED]. *Cf. Parks v. The New York Times Co.*, 308 F.2d 474, 477 (5th Cir. 1962) (observing that “determination of fraudulent joinder is to be based on whether there was a *real intention on colorable grounds* to procure a joint judgment”) (emphasis added).⁸

(a) Nonresident defendants have a right of removal.

The removal statute was enacted specifically “to protect defendants.” *Legg v. Wyeth*, 428 F.3d 1317, 1325 (11th Cir. 2005). *Cf., e.g., Picquet v. Amoco Prod. Co.*, 513 F. Supp. 938, 941 (M.D. La. 1981) (explaining that courts developed the fraudulent-joinder doctrine to protect “the right [of removal] granted to

⁸ In *Bonner v. City of Prichard*, 661 F.2d 1206, 1207 (11th Cir. 1981) (en banc), the Eleventh Circuit Court of Appeals adopted as binding precedent all decisions of the former Fifth Circuit rendered prior to October 1, 1981.

action arising from an alleged sexual assault of a minor “*shall be stayed* until the end of all phases of [any] criminal action”) (emphasis added). In this case, there is a parallel federal criminal grand jury action pending in the Southern District of Florida, *In re Grand Jury*, No. FGJ 07-103(WPB) (S.D. Fla.), which arises out of the same allegations pled here. Thus, in resorting to fraudulent joinder, the plaintiff has sought to avoid any application of this otherwise controlling statute. *Cf. Doe v. Francis*, No. 5:03 CV 260 MCR/WCS, 2005 WL 517847, at *1–2 (N.D. Fla. Feb. 10, 2005) (staying civil diversity action over plaintiffs’ objections on grounds that “the language of 18 U.S.C. § 3509(k) is clear that *a stay is required* in a case . . . where a parallel criminal action is pending which arises from the same occurrence involving minor victims”) (emphasis added).

Even outside the context of a mandatory federal statute, “the Supreme Court [has] admonished [that] ‘the Federal courts should not sanction devices intended to prevent a removal to a Federal court where one has that right, and should be equally vigilant to protect the right to proceed in the Federal court.’” *Legg*, 428 F.3d at 1325 (citing *Wecker v. Nat’l Enameling & Stamping Co.*, 204 U.S. 176, 186 (1907)). *See also id.* (observing that “Congress ‘did not extend [to defendants a right of removal] with one hand, and with the other give plaintiffs a bag of tricks

complaint contains four claims for relief, the first and second claims state *only one cause of action*)” (emphasis added). Using her original allegations *and adding nothing*, Jane Doe has tried to add claims against [REDACTED] for civil conspiracy (Am. Compl. ¶¶ 20–23), Intentional Infliction of Emotional Distress (Am. Compl. ¶¶ 24–28), and civil RICO (Compl. ¶¶ 29–34) in order to append a nondiverse defendant to her Complaint. These claims, however, are untenable under Jane Doe’s own allegations, and therefore cannot be used to destroy diversity jurisdiction.

(b) There is no possibility that the plaintiff can establish a cause of action against [REDACTED] under Florida law.

(i) The conspiracy claim against Robson must fail.

As a general rule, “[a]n actionable conspiracy [under Florida law] requires an *actionable underlying tort or wrong*.” *Wright v. Yurko*, 446 So. 2d 1162, 1165 (Fla. 5th DCA 1984) (citations omitted) (emphasis added).¹⁰

¹⁰ This case is governed by the general rule. *Cf. Churruca v. Miami Jai-Alai, Inc.*, 353 So. 2d 547, 550 (Fla. 1977) (noting that while there is “ordinarily . . . no independent tort for conspiracy,” there is a narrow exception to this rule when “the plaintiff can show some *peculiar power of coercion* possessed by the conspirators by virtue of their combination”) (emphasis added). *See generally Liappas v. Augoustis*, 47 So. 2d 582, 583 (Fla. 1950) (observing that “instances of conspiracy which is in itself an independent tort *are rare and should be added to with caution*” (quoting *Fleming v. Dane*, 22 N.E.2d 609, 611, (Mass. 1939))) (emphasis added). Plainly, this case involves the general rule, not the narrow exception, because *only one person* could have caused Jane Doe’s injuries. *Cf. Martin v. Marlin*, 529 So. 2d 1174, 1179 (Fla. 3d DCA 1988) (upholding

Buchanan v. Miami Herald Publ'g Co., 230 So. 2d 9, 12 (Fla. 1969) (holding that where Count I of the complaint had failed to state a cause of action for malicious prosecution, there could be no civil-conspiracy claim in Count II “based on the allegations of Count I”). Because the statute she expressly pleads as the basis for Count I, Chapter 800, Florida Statutes, provides no civil remedy, Jane Doe cannot prevail on Count I. Therefore, she cannot prevail on her claim for conspiracy (Count II) to violate Chapter 800, Florida Statutes (Count I).

(ii) The plaintiff cannot prevail against nondiverse defendant [REDACTED] on her claim for Intentional Infliction of Emotional Distress (IIED).

Even if the plaintiff, for the sake of argument, can assert an IIED claim against Jeffrey Epstein, the plaintiff still does not have a cause of action for IIED against [REDACTED]. *First*, the plaintiff cannot recover damages in connection with her own illegal conduct; and *second*, the plaintiff’s purported IIED claim fails as a matter of law.

omitted) (emphasis added); *Turner v. Anderson*, 704 So. 2d 748, (Fla. 4th DCA 1998) (“[N]o public policy should allow appellant to recover damages as a result of engaging in criminal conduct such as occurred in this case.”). *Cf. Ewell v. Daggs*, 108 U.S. 143, 149 (1883) (stating that “[n]o court will lend its aid to a [plaintiff] who founds [a] cause of action upon an immoral or an illegal act”) (quoting *Holman v. Johnson*, 98 Eng. Rep. 1120 (K.B. 1775)); *see also id.* (explaining that this policy is “not for the sake of the defendant, but because [*the courts*] *will not lend their aid to such a plaintiff*” (quoting *Holman*, 98 Eng. Rep. 1120)) (emphasis added); *Balas v. Ruzzo*, 703 So. 2d 1076, 1082 (Fla. 5th DCA 1997) (Harris, J., concurring) (remarking in the context of an action brought against an alleged prostitution house that “the court should continue its tradition of not interceding in civil conflicts involving transactions that are either illegal or are against public policy”).

Based on the foregoing, the plaintiff cannot blame someone else ([REDACTED] [REDACTED]) for the consequences of her own criminal conduct. *Cf. Feld & Sons, Inc. v. Pechner, Dorfman, Wolffe, Rounick and Cabot*, 458 A.2d 545, 552 (Pa. Super. Ct. 1983) (holding that law-firm clients could not recover damages flowing from their own criminal acts, even though clients’ lawyers had suggested the unlawful conduct to begin with). *See also Turner v. Anderson*, 704 So. 2d 748, 751 (Fla. 4th

(iii) The plaintiff cannot prevail on her claim for civil remedies for criminal practices or racketeering (“civil RICO”) pled in Count IV.

A cause of action under section 772.104, Florida Statutes (“Civil Remedies for Criminal Practices”) requires a showing of *direct injury*. Even assuming for the sake of argument that Jane Doe can establish that the defendants engaged in a “pattern of criminal activity,” she cannot establish that she was directly injured by those activities.

Section 772.104 allows someone to bring a civil RICO claim only if “he or she has been injured *by reason of*” any RICO violation. § 772.104, Fla. Stat. (2007). Here, the allegations in Count IV, even if they are true, do not add up to a civil RICO claim because there is no proximate cause between the purported “pattern of criminal activity” and Jane Doe’s alleged injuries.

In a doomed attempt to satisfy the extremely high burden of pleading civil RICO under Florida law, the Amended Complaint lists a series of violations rooted in Florida’s prostitution statutes. (Am. Compl. ¶ 31.) According to the Amended Complaint, the defendants participated in a criminal enterprise . . . or conspir[acy]” (Am. Compl. ¶ 30) over an unspecified length of time “to repeatedly find and bring [Jeffrey Epstein] underage girls . . . in order for Epstein to solicit, coerce, entice, compel, or force such girls in acts of prostitution and/or lewdness” (Am.

where petitioners alleged that they had “suffered emotional pain, anguish, humiliation, insult, indignity, loss of self-esteem, inconvenience, hurt and emotional distress” as a result of being forced repeatedly, over time, to “perform sexual acts to retain their employment”). Here, even if the Amended Complaint can be read to plead that the defendants schemed to solicit other massages from other people (*see, e.g.*, Am. Compl. ¶¶ 9, 11, 12, 32), those activities are not alleged in any way to have impacted *Jane Doe*. *Cf., e.g., Palmas Y Bambu, S.A. v. E.I. Dupont De Nemours & Co., Inc.*, 881 So. 2d 565, 570 (Fla. 3d DCA 2004) (holding that “indirect injuries, that is injuries sustained not as a direct result of predicate acts . . . *will not allow recovery under Florida RICO.*” (*quoting O'Malley v. St. Thomas Univ., Inc.*, 599 So. 2d 999, 1000 (Fla. 3d DCA 1992))) (emphasis added).

Because the Amended Complaint does not satisfy the direct-injury requirement under Florida’s RICO law, Jane Doe has failed to allege a cause of action against [REDACTED] for violation of section 772.103, Florida Statutes.

B. This Notice satisfies the procedural requirements of 28 U.S.C. § 1446.

1. This notice of removal is timely.

In accordance with 28 U.S.C. § 1446, this notice of removal is timely. Only defendant Epstein has been served with process. Defendants [REDACTED]

WHEREFORE, the Defendants, Jeffrey Epstein, [REDACTED], [REDACTED], and [REDACTED],
[REDACTED], remove this case from Palm Beach Circuit Court to the United States
District Court for the Southern District of Florida.

Respectfully submitted,

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Fax: [REDACTED]

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[REDACTED]
MICHAEL R. TEIN
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[REDACTED]

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IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA
CASE NO. 2006 CF09454AXX
STATE OF FLORIDA,

-vs-

JEFFREY EPSTEIN,
Defendant.

DEPOSITION OF [REDACTED]

Wednesday, February 20, 2008

2:00 p.m. - 4:30 p.m.

Palm Beach County Courthouse
205 North Dixie Highway
West Palm Beach, Florida 33401

COPY

Reported By:
Judith F. Consor, FPR
Notary Public, State of Florida
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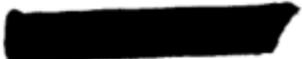


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I N D E X

WITNESS:

PAGE:


DIRECT EXAMINATION

4

BY MR. TEIN:

- - -
NO EXHIBITS MARKED
- - -

.....CERTIFIED QUESTIONS.....

Page	Line
53	22
55	1
59	2
111	14
112	2



1 my questions, will you just please let me know?
2 A. Yes.
3 Q. And if at any time you're not feeling well
4 or something like that, you'll tell us, right?
5 A. Yes.
6 Q. Do you feel okay today?
7 A. Yes.
8 Q. Not taking any alcohol or drugs or anything
9 like that, right?
10 A. No.
11 Q. So you feel ready to have your deposition
12 taken?
13 A. Yes.
14 Q. [REDACTED] what is your address?
15 A. I'm currently living at my aunt's house and
16 I don't know it off the top of my head.
17 Q. Where is it?
18 A. In Jupiter.
19 Q. Who is your aunt?
20 A. [REDACTED]
21 Q. Who else is living there?
22 A. [REDACTED] my uncle.
23 Q. Anyone else living there?
24 A. No.
25 Q. The contempt motion that your mother filed



1 Q. Where is that?
2 A. Palm Beach Lakes.
3 Q. Have you spent the night over there?
4 A. No, sir.
5 Q. Do you know the address there?
6 A. I do not.
7 Q. Isn't your sister [REDACTED] planning on living
8 with you and [REDACTED]?
9 A. No.
10 Q. [REDACTED] you know that this court case is a
11 criminal prosecution, correct?
12 A. Correct.
13 Q. And you know that it's a criminal
14 prosecution against a man who has no criminal background.
15 Do you know that?
16 A. I do now.
17 Q. You agree that court is a very serious
18 matter?
19 A. Yes.
20 Q. And you're here with your lawyer
21 Mr. Leopold, right?
22 A. Yes.
23 Q. And you know that Mr. Leopold recently
24 filed a lawsuit in federal court against Jeffrey Epstein,
25 seeking fifty million dollars.



1 MR. LEOPOLD: Lewis, we're not going to do
2 that.

3 MR. TEIN: My name is not Lewis.
4 I'm going to finish my question. Okay?

5 MR. LEOPOLD: Do not answer until you hear
6 from me.

7 BY MR. TEIN:

8 Q. Other than conversations that you have had
9 with Mr. Leopold -- I'm not asking about that -- are you
10 aware that Mr. Leopold has filed a lawsuit in federal
11 court seeking fifty million dollars from Jeffrey Epstein
12 on your behalf?

13 MR. LEOPOLD: Same objection.
14 Anything that you learn through
15 conversations between you and me, do not answer.
16 Those are protected. If you know through any
17 other realm of knowledge, you may answer.

18 THE WITNESS: No.

19 BY MR. TEIN:

20 Q. You have no idea that Mr. Leopold filed a
21 fifty million-dollar lawsuit on your behalf against
22 Jeffrey Epstein?

23 MR. LEOPOLD: Same objection.

24 Do not answer that question if it's through
25 discussions that you and I had. Outside of that,



1 objections. Check your rules.

2 MR. LEOPOLD: Excuse me. For the record,
3 Counsel asked me a question. I'll state the
4 answer on the record. He asked me the question am
5 I going to be answering that way throughout the
6 deposition. So long as there's improper
7 foundation and predicate asked by the attorney, I
8 will protect my client and I make the record where
9 appropriate. If counsel wishes to ask an
10 appropriate worded question with the proper
11 foundation and predicate, I will certainly allow
12 the client to answer the question.

13 MR. GOLDBERGER: Why don't you just state
14 attorney/client privilege and just be done with
15 it?

16 MR. LEOPOLD: I want the record to be
17 clear.

18 MR. TEIN: You want to waste time is what
19 you want to do.

20 You were supposed to be here this morning
21 and you totally broke the deal, the agreement that
22 you had with us if your hearing got cancelled.

23 But let's move on and maybe you'll stop
24 obstructing this deposition.

25 MR. LEOPOLD: I think the record is very



1 an attorney, filed a fifty-million-dollar lawsuit on your
2 behalf against Jeffrey Epstein, yes or no?

3 MR. LEOPOLD: Same objection.

4 MR. TEIN: We've heard the objection 10
5 times already.

6 MR. LEOPOLD: Counsel, excuse me.

7 MR. TEIN: Just say attorney/client
8 privilege. Stop interrupting my questions.

9 MR. LEOPOLD: I'm entitled to make an
10 objection for the record, which I'm doing, and
11 I'll make the same objection. And if it calls for
12 attorney/client privilege, any conversations you
13 and I have had, do not answer the question.

14 And I think that it might be appropriate,
15 for the record, to ask questions via [REDACTED]
16 [REDACTED] as opposed to [REDACTED] I think that
17 would be more appropriate for this deposition.

18 BY MR. TEIN:

19 Q. Go ahead. Please answer yes or no.

20 A. Yes.

21 Q. Thank you.

22 In fact, you know that Mr. Herman held a
23 press conference after he filed the fifty-million-dollar
24 lawsuit on your behalf, don't you?

25 A. After it happened.



1 MR. LEOPOLD: We're going to leave or we're
2 going to take a break, because his demeanor is not
3 appropriate. There's no reason to have this kind
4 of demeanor. If you want to have this kind of
5 demeanor with me --

6 MR. TEIN: You are obstructing this
7 deposition.

8 MR. GOLDBERGER: Why don't you guys go
9 outside and just talk about --

10 MR. LEOPOLD: She -- her job is very
11 difficult and she's not going to be able to take
12 us both talking at the same time.

13 MR. GOLDBERGER: Off the record.

14 MR. LEOPOLD: We're not going off the
15 record, Jack. We're not, Jack. Her job is very
16 difficult. I'm going to make the record.

17 I don't think it is appropriate, especially
18 in the small confines of this room, to be very
19 aggressive with this young lady.

20 MR. TEIN: That's not happening. Stop,
21 stop actually --

22 MR. LEOPOLD: If you're going to interrupt
23 me, we're going to cancel this deposition --

24 MR. TEIN: Stop misrepresenting.

25 THE COURT REPORTER: I need one at a time,



1 You were supposed to be here at nine a.m. ;
2 it's now after two. Take your break and come
3 back.

4 MR. LEOPOLD: Okay. If the demeanor keeps
5 up, we will not be here beyond those five minutes.

6 MR. TEIN: Take your break and come back.

7 MR. LEOPOLD: Okay. So I suggest that you
8 relax.

9 MR. TEIN: I suggest that you take your
10 break.

11 MR. GOLDBERGER: Let them take that
12 five-minute break.

13 MR. LEOPOLD: But I would suggest that you
14 take deep breaths.

15 MR. TEIN: Suggest whatever you want. Go
16 take a break.

17 (Thereupon, a recess was taken.)

18 BY MR. TEIN:

19 Q. [REDACTED] you agree that giving testimony
20 today at your deposition is something very serious, don't
21 you?

22 A. Yes.

23 Q. And you respect the court, don't you?

24 A. Yes.

25 Q. Let me show you Exhibit 31-001. Can you



1 Q. Did you send that message to a friend of
2 yours on MySpace?

3 A. Sure, yes.

4 Q. Were you referring to this deposition?

5 A. Yes.

6 Q. Do you find the term n-i-g-g-e-r offensive?

7 A. That's not anywhere in there.

8 Q. What word did you use in there?

9 MR. LEOPOLD: Where are you referring to,
10 Counsel? There's 20 plus words in there.

11 MR. TEIN: Don't make a speaking objection.

12 THE WITNESS: Are you referring to
13 anything --

14 MR. LEOPOLD: No, [REDACTED] Don't -- don't --
15 let him ask you the question.

16 BY MR. TEIN:

17 Q. What question were you asking, [REDACTED]?

18 MR. LEOPOLD: She doesn't ask questions.
19 You ask the questions. What is the question
20 pending?

21 BY MR. TEIN:

22 Q. [REDACTED] what is the last word on there in
23 the text of your message before the closing?

24 A. Niggaa.

25 Q. Don't you find that term offensive?



1 BY MR. TEIN:

2 Q. Let me ask you, [REDACTED] did you in fact
3 write your friend this message about this deposition?

4 A. Yes.

5 Q. So you wrote your friend that this
6 deposition is stupid court s-h-i-t, correct?

7 A. Yes.

8 Q. Because you think this deposition is stupid
9 court s-h-i-t, don't you?

10 A. No.

11 Q. You wrote that to your friend, didn't you?

12 A. Yes.

13 Q. You think that court is stupid, don't you?

14 A. In some cases.

15 Q. And you think that court is bull s-h-i-t,
16 don't you?

17 A. No.

18 Q. And you think this deposition is bull
19 s-h-i-t, don't you?

20 A. No.

21 Q. You wrote that to your friend, didn't you?

22 MR. LEOPOLD: Objection. Asked and
23 answered.

24 MR. TEIN: That's not an objection.

25 BY MR. TEIN:



1 BY MR. TEIN:

2 Q. [REDACTED] you think that giving testimony
3 today, under oath, is bull s-h-i-t, don't you?

4 A. No.

5 Q. And you wrote that to your friend on
6 MySpace last week, didn't you?

7 MR. LEOPOLD: Objection. Asked and
8 answered.

9 THE WITNESS: No, I did not.

10 BY MR. TEIN:

11 Q. You didn't write this exhibit?

12 A. I wrote that, but I didn't write what you
13 said.

14 Q. You wrote in this exhibit, "I got some
15 stupid court s-h-i-t on the 20th. Bull s-h-i-t." Didn't
16 you write that?

17 A. Yes.

18 Q. Referring to this deposition, didn't you?

19 A. Referring to the court. I was later
20 informed that it was a deposition.

21 Q. I'm going to ask you some questions now
22 about what happened when you went to Jeff Epstein's house
23 three years ago. Okay?

24 A. Uh-huh.

25 Q. When the police interviewed you one month



1 A. Yes.

2 Q. Before you got to Epstein's house [REDACTED]
3 never said anything to you on the telephone about sexual
4 activity with Epstein, did she?

5 A. No.

6 Q. And before you got to Epstein's house
7 [REDACTED] never sent you a message over the Internet about
8 sexual activity with Epstein, did she?

9 A. No.

10 Q. Did [REDACTED] ever try to convince you to
11 engage in any sexual activity with Epstein?

12 A. No.

13 Q. Did [REDACTED] every try to convince
14 you to engage in any sexual activity with Epstein?

15 A. I don't know who [REDACTED] is.

16 Q. Do you have a friend [REDACTED]?

17 A. No.

18 Q. Okay. Before you went so Epstein's house
19 did anyone call or e-mail you to induce you to engage in
20 sexual activity with Epstein?

21 A. No.

22 Q. So you're sure that before you got to
23 Epstein's house no one tried to persuade you to engage in
24 sexual activity with Jeffrey Epstein?

25 A. No.



1 MR. LEOPOLD: If you do it one more time,
2 we're leaving.

3 BY MR. TEIN:

4 Q. 

5 MR. LEOPOLD: I'm going to make the record.
6 You cannot interrupt me when I'm making the
7 record. Out of professional conduct, you cannot
8 do that. I'm entitled to make the record. I made
9 an objection, asked and answered. Your demeanor
10 is inappropriate. You're willing and you are able
11 and you're responsible to ask a question in a
12 professional manner, and ask the question and once
13 you get the answer, to either follow up on it or
14 move on, but not continuously browbeat and ask the
15 same question over and over because you don't like
16 the answer.

17 MR. TEIN: Calm down, sir.

18 MR. LEOPOLD: Trust me, I'm very calm here.
19 When I'm not calm, you'll know it. I'm very calm.

20 So please continue on. But I will not
21 allow you to continue to harass her in the
22 demeanor that you're doing. Ask her a question
23 and move on.

24 MR. TEIN: Are you done?

25 MR. LEOPOLD: Thank you. I am.



1 put up with it and I don't need to put up with it
2 and it's not appropriate. And I'm sure
3 Mr. Goldberger knows all this, because I know that
4 he wouldn't do this. So I will not put up with
5 it. And I think it's highly inappropriate to do
6 this with this child sitting here, the way you're
7 acting, primarily towards me, and I will not put
8 up with it.

9 MR. TEIN: Will you please stop your speech
10 so I can ask questions?

11 MR. LEOPOLD: So long as you act
12 professionally, I will do so. But if you continue
13 to do it this way, I will leave.

14 MR. TEIN: Suit yourself.

15 BY MR. TEIN:

16 Q. [REDACTED] are you sure that before you got to
17 Epstein's house no one tried to persuade you to engage in
18 sexual activity with Epstein for money?

19 MR. LEOPOLD: Asked and answered.

20 Objection.

21 MR. TEIN: Did you get her answer?

22 THE COURT REPORTER: No, I did not.

23 THE WITNESS: I'm sure.

24 BY MR. TEIN:

25 Q. Let me ask you a few questions about your



1 A. No.

2 Q. All right. Let me ask you two final areas
3 of questioning about this and we'll move onto something
4 else. Okay?

5 A. Uh-huh. Yes. I'm sorry.

6 Q. Before you got to Epstein's did anyone
7 associated with Epstein ever call you on the phone and
8 try to persuade, induce, entice or coerce you to engage
9 in any sexual activity?

10 A. No.

11 Q. Before you got to Epstein's did anybody
12 associated with Epstein ever contact you on the Internet
13 and try to persuade, induce, entice or coerce you to
14 engage in any sexual activity?

15 A. No.

16 Q. [REDACTED] who told you that when you got to
17 Jeff Epstein's house you should lie to Jeff about your
18 age?

19 A. [REDACTED]

20 Q. Was it [REDACTED] or was it the other girl in
21 the car who you rode over with to Epstein's house?

22 A. [REDACTED]

23 Q. Who was the other girl in the car with you
24 that day?

25 A. I honestly don't know.



1 Q. When you first met Jeff he tried to find
2 out how old you were, right?

3 A. Not when we first introduced each other;
4 when we get upstairs, then, yes.

5 Q. During the massage Jeff asked you how old
6 you were, correct?

7 A. Yes, yes.

8 Q. Now hadn't you already told Jeff's
9 assistant, the one who walked you upstairs, that you went
10 to college and had just moved down here from Ohio?

11 A. I never spoke to the lady.

12 Q. Do you want to rethink that answer?

13 MR. LEOPOLD: Is that a question?

14 BY MR. TEIN:

15 Q. Do you want to rethink that answer?

16 A. No. I didn't really speak with her that
17 much.

18 Q. Do you want to try to refresh your memory
19 on that?

20 MR. LEOPOLD: Do you have something to
21 refresh her memory with?

22 MR. TEIN: Do you want to stop making
23 speaking objections?

24 MR. LEOPOLD: No. But to refresh someone's
25 memory, you show them a document.



1 Q. You can answer the question.

2 A. Sure.

3 Q. Is there anything that would refresh your
4 memory that in fact you told Mr. Epstein's assistant, the
5 one who walked you upstairs, that you went to college and
6 you had just moved down here from Ohio?

7 A. I don't remember saying that, but if you --
8 I don't remember saying that myself, so --

9 Q. That would be a lie, right?

10 A. No. I really don't remember.

11 Q. So you told Jeff that you were 18 years
12 old, correct?

13 A. Yes.

14 Q. Do you remember Detective Michelle Pagan of
15 the Police Department, Palm Beach Police Department?

16 A. Yes.

17 Q. Do you remember you spoke to her?

18 A. Yes.

19 Q. Do you remember that you told Detective
20 Pagan that when you lied about your age to Jeff you said
21 it really fast because you didn't want to make it sound
22 like you were lying?

23 A. I don't remember the words exactly, but I
24 do remember telling her I told him I was 18.

25 Q. And do you remember telling Detective Pagan



1 BY MR. TEIN:

2 Q. Let me put it again.

3 Does it sound right to you that you told
4 Detective Pagan that when you lied about your age to
5 Jeffrey Epstein, you said it really fast because you
6 didn't want to make it sound like you were lying?

7 MR. LEOPOLD: Objection. Lack of
8 foundation, asked and answered.

9 THE WITNESS: I could have possibly said
10 that, yes.

11 BY MR. TEIN:

12 Q. You didn't want Mr. Epstein to know that
13 you were lying about your age, right?

14 A. Correct.

15 Q. You didn't want Mr. Epstein to know that
16 you were not 18 yet, right?

17 A. Correct.

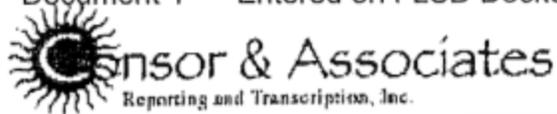
18 Q. You wanted Mr. Epstein to believe that you
19 really were 18, right?

20 A. Correct.

21 Q. Do you remember when Mr. Epstein asked
22 where you went to school?

23 A. Yes.

24 Q. And you told Mr. Epstein you went to
25 Wellington, right?



1 that would do that to a witnesses or to a person
2 that's sitting in this chair is not acting
3 professionally. You can't ask a question like
4 that. You can do it, but it's not proper. And
5 I'm sure you weren't trained that way, certainly
6 not ethically.

7 MR. TEIN: Will you stop?

8 MR. LEOPOLD: I'm not going to stop,
9 because the way you're asking that question is
10 improper and you know it.

11 MR. TEIN: You're losing your cool.

12 BY MR. TEIN:

13 Q. Ms. [REDACTED] --

14 MR. LEOPOLD: Trust me. I'm very calm.
15 When I lose my cool, you'll know it.

16 MR. TEIN: I do know it.

17 BY MR. TEIN:

18 Q. Ms. [REDACTED] Mr. Epstein never asked you
19 to do anything other than massage him, correct?

20 A. Incorrect; because he asked me to take off
21 my bra, so that would be two things he's asked me to do.

22 Q. Other than asking you to take your bra off,
23 Mr. Epstein never asked you to do anything with him other
24 than massage, correct?

25 MR. LEOPOLD: Objection. Foundation,



1 Q. You told the police twice when you spoke to
2 Michelle Pagan that "at no time did he touch me." Didn't
3 you say that to the police?

4 A. Yeah.

5 Q. And you're saying that that was not fully
6 truthful. Is that what you're saying now?

7 A. Correct.

8 Q. And you're saying if you're not fully
9 truthful, that's not a lie. Correct?

10 A. You took that out of context like really
11 bad. I didn't mean like that. Touching my legs and --
12 he never kept his hands to himself the entire time.
13 That's what I'm trying to say.

14 Q. You told the police, "At no times did he
15 touch me." You agree with that, correct?

16 A. No, I don't agree with that, because he did
17 touch me.

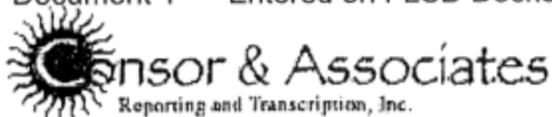
18 Q. Did you tell the police that he did not
19 touch you, yes or no?

20 A. It's a possibility, but I do not remember.

21 Q. Okay. And you did not have any type of sex
22 with Jeff, correct?

23 A. No.

24 Q. And you did not have any type of oral sex
25 with Jeff, correct?



1 things, but it wasn't joking about it at all.

2 Q. You joked about it, didn't you?

3 A. No.

4 Q. You said to [REDACTED] that if you did this
5 every weekend you'd be rich, didn't you?

6 A. No. That's what [REDACTED] told me.

7 Q. You didn't tell that to [REDACTED]

8 MR. LEOPOLD: Objection. Asked and
9 answered.

10 THE WITNESS: No.

11 BY MR. TEIN:

12 Q. After you left Epstein's house you took the
13 money and you went shopping with [REDACTED] and the other
14 girl in the car, correct?

15 A. Incorrect. I didn't spend any of the
16 money.

17 Q. You went to Marshall's, didn't you?

18 A. I went along, yes, but I didn't --

19 Q. You went shopping with them at Marshall's,
20 didn't you?

21 MR. LEOPOLD: Objection.

22 THE WITNESS: I guess you could say that.

23 MR. LEOPOLD: Objection. Lack of predicate
24 and foundation. Mischaracterization of earlier
25 testimony.



1 A. It was not this year, no.

2 Q. Was it 2007?

3 A. I'd have to say at least two years ago or a
4 year ago, yeah. So it would be 2007, 2006; but it was a
5 while ago.

6 Q. How many federal prosecutors or FBI agents
7 came to your house?

8 A. I'm trying to remember. I want to say four
9 people came.

10 Q. Did they give you their business cards?

11 A. If they did, I don't remember, and they
12 weren't toward me. Maybe my parents have them. I don't
13 know.

14 Q. Did they give you their cell phone numbers?

15 A. No.

16 Q. Did you ever speak to them on their cell
17 phones?

18 A. No, sir.

19 Q. Did they speak to your parents?

20 A. That's something you'd have to ask my
21 parents.

22 Q. Do you know whether they spoke to your
23 parent's?

24 A. No, sir.

25 Q. You have no idea?



1 fashion, you may answer.
2 THE WITNESS: Okay.
3 I wouldn't know.
4 BY MR. TEIN:
5 Q. You don't know?
6 A. No.
7 MR. LEOPOLD: Objection. Foundation.
8 Attorney/client privilege.
9 BY MR. TEIN:
10 Q. And you say you don't know who [REDACTED]
11 is?
12 A. No, sir.
13 Q. Does it refresh your recollection that he's
14 [REDACTED]
15 A. No.
16 Q. That he's [REDACTED] boss?
17 A. No.
18 Q. Does it refresh your memory that he's the
19 ex-partner of Jeff Herman, the first lawyer who sued
20 you -- sued Mr. Epstein on your behalf for fifty million
21 dollars?
22 A. No, sir. I don't know who he is.
23 Q. Without telling me any conversations that
24 you've had with your lawyers, how is it that you selected
25 Mr. Herman as your lawyer from the 81,000 members of the



1 Mr. Herman in the presence of [REDACTED]?

2 A. None.

3 Q. What discussions did you have in the
4 presence of her aunt?

5 A. Of my aunt?

6 MR. GOLDBERGER: It's the witness's aunt.

7 BY MR. TEIN:

8 Q. Oh, of your aunt.

9 A. The only one that we've ever discussed or
10 ever had.

11 Q. And so you were in a conversation with
12 Mr. Herman and your aunt?

13 A. Yes, sir.

14 Q. And you discussed privileged matters during
15 that conversation?

16 MR. LEOPOLD: Object to the form. I think
17 you might have to educate her on that question.

18 BY MR. TEIN:

19 Q. You discussed the lawsuit?

20 A. Yes.

21 Q. Did [REDACTED] tell you about any
22 conversations that she had with Mr. Herman?

23 A. As far as I'm concerned, she's never spoken
24 or she's never had a conversation. She only opened the
25 door and then left. She's the one who answered the door.



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1 A. No.

2 Q. And we've learned that many of the girls,
3 some of whom are as old as 23, were told by the
4 government that they would get money at the end of the
5 criminal prosecution. Does that sound familiar to you?

6 A. No, sir.

7 Q. Other than Mr. Leopold here -- I'm not
8 asking about Mr. Herman either --

9 A. Uh-huh.

10 Q. -- did anyone ever discuss with you that
11 you could get reimbursement for your damages?

12 A. No, sir.

13 Q. Did you or any member --

14 MR. LEOPOLD: Are you referring to a
15 criminal matter or a civil matter?

16 BY MR. TEIN:

17 Q. Did you or any member --

18 MR. LEOPOLD: Excuse me. Let me object to
19 the form of the question.

20 BY MR. TEIN:

21 Q. Did you or any member of your family ever
22 get a victim notification letter from anyone?

23 A. I no longer live at that residence and I
24 wouldn't know.

25 Q. So your testimony is that you have never



1 it back at the end of the meeting?

2 A. No. They -- yeah. No. They have it. I'm
3 guessing. I don't have it.

4 Q. How much money are you hoping to get out of
5 Mr. Epstein?

6 MR. LEOPOLD: Objection to the form of the
7 question. Attorney/client privilege.

8 BY MR. TEIN:

9 Q. How much money are you hoping to get, you,
10 yourself, hoping to get out of Epstein?

11 MR. LEOPOLD: Same. Same objection,
12 attorney/client privilege.

13 Don't answer the question.

14 BY MR. TEIN:

15 Q. I'm not asking about what your lawyer told
16 you.

17 MR. LEOPOLD: I'm instructing her not to
18 answer the question, because any of those
19 conversations involve her counsel.

20 MR. TEIN: Certify that.

21 MR. LEOPOLD: Please.

22CERTIFIED QUESTION.....

23 BY MR. TEIN:

24 Q. Now, [REDACTED] you lied to get out of this
25 deposition, didn't you?



1CERTIFIED QUESTION.....

2 BY MR. TEIN:

3 Q. You asked your co-workers --

4 MR. LEOPOLD: It's vague and ambiguous.

5 BY MR. TEIN:

6 Q. You asked your co-workers at the
7 Quarterdeck Tavern to lie for you, didn't you?

8 A. No. I informed my boss about what was
9 going on and he told me that he would help in any way
10 that he can.

11 Q. Okay. You got your friend [REDACTED] to lie
12 by switching name tags with you, correct?

13 A. Incorrect. It was a coincidence that same
14 night she was not wearing her name tag; she was wearing
15 mine. But I was also not wearing -- I was wearing my
16 name tag. Everyone switches name tags. It just so
17 happens it was a coincidence that same night the people
18 came with the papers.

19 MR. TEIN: Will you put up Exhibit 18-001?

20 MR. GOLDBERGER: And mark 18-001 for
21 identification purposes to this deposition.

22 MR. LEOPOLD: None of them have been marked
23 yet. Can we mark them and put them as attachment
24 to the depositions? Because I think you've shown
25 three photos now. And this is the only one that



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1 A. Yes.

2 Q. [REDACTED] your friend, who you say the day
3 that the process servers went to serve you with a
4 subpoena for this deposition, just happened -- just by
5 coincidence, was wearing your name tag?

6 A. Yes, sir.

7 Q. And just by coincidence, you were wearing
8 her name tag, correct?

9 A. Yes.

10 Q. Your testimony under oath is that's just a
11 coincidence, right?

12 A. Total honesty.

13 Q. It just happens to be the day that you were
14 going to be served with a subpoena, correct?

15 A. That wasn't the first day that --

16 MR. LEOPOLD: [REDACTED] just answer the
17 question. It calls for a yes or no.

18 THE WITNESS: Yes.

19 BY MR. TEIN:

20 Q. You said that wasn't the first day you were
21 going to be -- you thought you were being served with a
22 subpoena, correct?

23 A. Correct.

24 Q. You knew before the day that you switched
25 name tags with [REDACTED] that the process servers were



1 MR. LEOPOLD: I'll certify it.

2CERTIFIED QUESTION.....

3 She's answered that question. She's explained it five
4 times already. The fact that Counsel doesn't like the

5 answer, that's a different query.

6 MR. TEIN: Stop making speaking objections.

7 MR. LEOPOLD: I'm not. I'm not going to
8 put up with it, because it's in appropriate, Jack,
9 and you know it. I will not allow Counsel to
10 berate a witness, whether it's in a criminal case
11 or a civil case, whether my client or --

12 MR. TEIN: Calm down.

13 MR. LEOPOLD: Excuse me.

14 No, I'm not going to allow it. That is not
15 proper.

16 MR. GOLDBERGER: Okay.

17 MR. LEOPOLD: If he wants to say that she's
18 lying after asking it five times and her
19 explaining in great detail, he can do that. But
20 I'm not going to allow her to answer, nor be
21 harassed by him. It's improper.

22 MR. GOLDBERGER: Okay. But your response
23 that Counsel doesn't like the question -- or
24 doesn't like the answer -- just let me finish.

25 MR. LEOPOLD: Absolutely. I wasn't going



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1 MR. LEOPOLD: This is really big stuff that
2 you're going through. But that's fine; just ask
3 your question and move on. But do it one time.
4 If you don't understand it, I'll let you follow
5 up, but I'm not going to allow you to ask the same
6 question time and again and then call her a liar.
7 Just ask the question, get the answer and move to
8 the next subject matter.

9 MR. TEIN: Ted, I'm sitting right across
10 the table from you.

11 MR. LEOPOLD: Yes, sir.

12 MR. TEIN: Please be quiet. Don't yell.

13 MR. LEOPOLD: I will not be quiet.

14 MR. TEIN: Stop yelling.

15 MR. LEOPOLD: Lewis, when I'm yelling
16 you'll know it. I will not --

17 MR. TEIN: My name is not Lewis.

18 MR. LEOPOLD: I thought your first name was
19 Lewis, Mr. Tein.

20 MR. TEIN: You watched me for three days at
21 the evidentiary hearing where you sat in the back
22 of the courtroom. You should know who I am.

23 MR. LEOPOLD: Well, that's the impression
24 you must have made in the courtroom.

25 I will not be quiet.

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1 Q. Where were you when [REDACTED] told this
2 someone that you were not at the Quarterdeck Tavern?

3 A. Eating nachos.

4 Q. At the Quarterdeck Tavern?

5 A. Yes.

6 Q. What did you do so that [REDACTED] would lie to
7 the process servers for you?

8 A. Nothing.

9 Q. You just got him to lie for you, didn't
10 you?

11 A. No. I had no influence on him saying I
12 wasn't there.

13 Q. He took that upon himself?

14 Isn't it true that Mr. Epstein's process
15 servers had to ask the police to get you out of the
16 restaurant so that they could serve you?

17 MR. LEOPOLD: Objection. Lack of
18 foundation, predicate.

19 BY MR. TEIN:

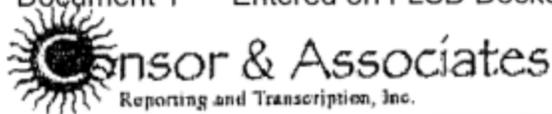
20 Q. You can answer the question.

21 MR. LEOPOLD: If you know. Don't guess.

22 THE WITNESS: No. Can you repeat the
23 question?

24 MR. TEIN: Don't coach.

25 MR. LEOPOLD: Don't guess.



1 Q. When did you delete your MySpace page?
2 A. A couple days ago.
3 Q. Who told you to take your MySpace page down
4 a couple of days ago?
5 A. Nobody. I'm sick and tired of MySpace.
6 Q. You all of a sudden got sick and tired of
7 MySpace and just a few days before this deposition you
8 decided to delete your MySpace page, correct?
9 A. Correct.
10 Q. Is that your testimony under oath?
11 A. Yes.
12 Q. Did you take your MySpace page down because
13 you thought the government might subpoena it?
14 A. Incorrect.
15 Q. Hadn't your MySpace page been up for over
16 three months before you took it down?
17 A. Correct. But I also had made tons of
18 MySpaces over the last years. I just get tired of them
19 and delete them because -- drama -- and make new ones.
20 Q. We're going to talk about that.
21 So you deleted your MySpace page after you
22 were already under subpoena for this deposition, correct?
23 A. Correct.
24 Q. What about the MySpace page didn't you want
25 us to see, [REDACTED]



1 Q. And where is the one body piercing?

2 A. Belly.

3 Q. When did you get that?

4 A. For my birthday, with my stepmother and my
5 father.

6 Q. And when was that?

7 A. When I was 14.

8 Q. Okay. So you had that body piercing when
9 you met Epstein, correct?

10 A. It might have been, or maybe that -- yeah,
11 either my 14th birthday or my 15th. I honestly don't
12 remember.

13 Q. Now you've lied about your age to get into
14 bars by using driver's licenses that aren't yours,
15 correct?

16 A. Incorrect.

17 Q. Are you swearing under oath that you've
18 never done that?

19 A. Yes, I swear under oath.

20 Q. And you've lied about your age to buy beer,
21 correct?

22 A. Incorrect.

23 Q. You're swearing under oath that you've
24 never lied to stores about your age?

25 A. I've never lied to a store about my age or



1 Q. Now you can explain your answer.

2 A. I know that I have seen all of these and I
3 know that this one is mine.

4 Can you go down?

5 MR. LEOPOLD: Just for the record, you're
6 pointing to the photo.

7 THE WITNESS: I'm pointing to --

8 BY MR. TEIN:

9 Q. You're pointing to the one where it says
10 your age is 18?

11 A. Correct.

12 Q. That's yours, right?

13 A. Correct. That's mine from a couple years
14 ago that I have not been on, because I don't use that.
15 Please keep going down, please. And I think that's it,
16 because there's no one -- just that one is mine.

17 Q. So the one you pointed to where it says
18 your age is 18, that's yours, correct?

19 A. Correct.

20 Q. And when you wrote 18 as your age on your
21 MySpace page, that was a lie, wasn't it?

22 A. Correct.

23 Q. Did you lie about your MySpace page back
24 then because you couldn't post on MySpace unless you were
25 18?



1 THE WITNESS: I don't know which MySpace
2 you're talking about.

3 BY MR. TEIN:

4 Q. The MySpace page that you're just pointing
5 to, where it says you were 18.

6 A. Yes.

7 Q. And you were lying about your age, right?

8 A. Uh-huh.

9 Q. Why did you finally post your true age on
10 your MySpace profile --

11 A. Uh --

12 Q. -- four days before you were scheduled to
13 testify before the Grand Jury?

14 A. I honestly don't know which MySpace,
15 because I've had like a bazillion MySpaces, and in that
16 year, I had two, that one and another one, and that one's
17 been deleted. So I don't know which one you're referring
18 to.

19 Q. You remember that you changed your age on
20 your MySpace page from 18 to your true age just four days
21 before you went and testified in the Grand Jury?

22 A. No.

23 Q. You don't remember that.

24 A. No.

25 Q. Do you remember Detective Recarey? Did you



1 THE WITNESS: No. I'm pretty sure my dad
2 drove me, because he was there with me.

3 BY MR. TEIN:

4 Q. Did any detective tell you to change your
5 age on your MySpace page, to put your true age?

6 A. No, sir.

7 Q. Now you also lied on your MySpace page
8 about your income, didn't you?

9 A. Yes.

10 Q. And you lied, saying that you made a
11 quarter million dollars a year and higher, correct?

12 A. As a joke, yes.

13 Q. That was a lie, wasn't it?

14 A. Yes.

15 Q. And you also lied on your MySpace page,
16 saying that you were married, didn't you?

17 A. Possibly. And that might have been an
18 error on my part.

19 Q. Now you also lie to the police, don't you?

20 A. No.

21 Q. Well, you lied to the police in your
22 tape-recorded statement that you gave to Detective
23 Michelle Pagan three years ago, didn't you?

24 A. To my knowledge, no, I did not.

25 Q. Well, you lied to the police when you

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UNITED STATES DISTRICT COURT
 SOUTHERN DISTRICT OF FLORIDA
08-80804-Civ-MARRA/JOHNSON

CASE NO.: _____

JANE DOE,
 a/k/a JANE DOE #1,

Plaintiff,

vs.

JEFFREY EPSTEIN, [REDACTED],
 and [REDACTED],

Defendants.

NOTICE OF REMOVAL

In accordance with 28 U.S.C. §§ 1441, 1446, and 1332(a)(1), the defendants, Jeffrey Epstein, [REDACTED], and [REDACTED], hereby remove this action¹ from Palm Beach County Circuit Court to the United States District Court for the Southern District of Florida, and respectfully state as follows:

Introduction

Six months ago, this plaintiff filed virtually the identical lawsuit in this Court. *See Jane Doe #1 v. Epstein*, Case No. 08-cv-80069-KAM (S.D. Fla. filed

¹ *Doe v. Epstein et al.*, Case No. 50 2008 CA 006596 XXXX MB (Fla. 15th Cir. Ct. filed Mar. 6, 2008).

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Jan. 24, 2008) (the “First Federal Action”). The First Federal Action named Jeffrey Epstein as the sole tortfeasor, made the identical operative allegations as the instant Amended Complaint, and demanded damages of \$50 million. (The amount of the demand against Epstein is evidently the product of recent reports in the press that Epstein is wealthy.)

The First Federal Action was quickly followed by a series of substantially identical “Jane Doe” lawsuits, all filed by the same attorney in a three-month span. *Compare Jane Doe #1 v. Epstein*, Case No. 08-cv-80069-KAM (S.D. Fla. filed Jan. 24, 2008), with *Jane Doe #2 v. Epstein*, No. 08-CV-80119-KAM (S.D. Fla. filed Feb. 6, 2008) (asserting identical causes of action based on the same operative allegations), *Jane Doe #3 v. Epstein*, No. 08-CV-80232-KAM (S.D. Fla. filed Mar. 5, 2008) (same), *Jane Doe #4 v. Epstein*, No. 08-CV-80380-KAM (S.D. Fla. filed Apr. 14, 2008) (same), and *Jane Doe #5 v. Epstein*, No. 08-80381-CV-KAM (S.D. Fla. filed Apr. 14, 2008) (same).

On February 20, amid these filings, Jane Doe #1 was deposed in *State of Florida v. Jeffrey Epstein*, 502006CF009454AXXXMB (Fla. 15th Cir. Ct., filed Jul. 19, 2006), a parallel state-court criminal action. During that deposition, she made numerous admissions that completely undermined the allegations against Epstein that she had pled in her complaint. A copy of her deposition, with names

redacted, is attached hereto (Exhibit A). Two days later, counsel for Jane Doe #1 filed a notice of voluntary dismissal without prejudice in the First Federal Action. *See Doe #1 v. Epstein*, Case No. 08-CV-80069-KAM, DE 9.

Two weeks later (March 6, 2008), having changed lawyers, Jane Doe #1 refiled her complaint in Florida Circuit Court as the instant case, adding two nominal defendants: ██████████ ██████████ Mr. Epstein's personal secretary, and ██████████ ██████████ one of Jane Doe #1's contemporaries. These defendants have nothing to do with the plaintiff's case against Mr. Epstein, except that the presence of ██████████ ██████████ as a defendant in this new case, because she is a citizen of Florida (Am. Compl. ¶ 4), would ostensibly prevent complete diversity.²

As discussed below, however, ██████████ ██████████ was named in the refiled lawsuit only to destroy diversity jurisdiction, and to prevent any application of 18 U.S.C. § 3509(k), a mandatory stay provision applicable in federal court.³ Haley

² Defendant Kellen is a citizen of New York (Am. Compl. ¶ 5), and is therefore a nonresident defendant for purposes of diversity jurisdiction and removal.

³ Section 3509(k) of Title 18, United States Code, provides as follows:

If, at any time that a cause of action for recovery of compensation for damage or injury to the person of a child exists, a criminal action is pending which arises out of the same occurrence and in which the child is the victim, *the civil action shall be stayed until the end of all phases of the criminal action* and any mention of the civil action during the criminal proceeding is prohibited. As used in this subsection, a criminal action is pending until its final adjudication in the trial court.

Robson, besides having nothing to do with the substantive allegations of the plaintiff's \$50,000,000 case, is a community-college student with *no assets whatever*.

Even if this case purports to identify a new (and strategically nondiverse) tortfeasor, the refiled lawsuit is still directed against only one defendant—Jeffrey Epstein. Then and now, the operative allegations are the same: Jane Doe alleges that Jeffrey Epstein assaulted her “in violation of Chapter 800 of the Florida Statutes.”⁴ (Am. Compl. ¶ 18.) To sharpen her lawsuit, the plaintiff says she is seeking damages in connection with a “conspiracy” (Am. Compl. ¶ 22), a “plan” (Am. Compl. ¶ 32), a “scheme” (Am. Compl. ¶ 32), and an “enterprise” (Am. Compl. ¶ 32). These theories of liability, however, cannot be supported by the allegations in the Amended Complaint. Even if everything in the Amended Complaint were true, recovery against ██████████, under any formulation, is impossible under Florida law.

Focusing on the real parties to this controversy, the instant case could have (once again) been brought here in federal court—just like the four other “Jane

18 U.S.C. § 3509(k) (emphasis added).

⁴ Chapter 800, Florida Statutes, is entitled, “Lewdness; Indecent Exposure.”

Doe” lawsuits presently pending against Epstein, filed by this plaintiff’s former lawyer.

This case is properly removed to federal court, *first*, because there is complete diversity among the real parties-in-interest, *second*, because the amount in controversy exceeds \$75,000, and *third*, because this Notice complies with the requirements of 28 U.S.C. § 1446.

Discussion

A. This case is properly removable because it falls within the original jurisdiction of the United States District Court for the Southern District of Florida.

A state-court case is properly removable when “it could have been brought, originally, in a federal district court.” *Lincoln Prop. Co. v. Roche*, 546 U.S. 81, 83 (2005) (*citing* 28 U.S.C. § 1441(a)). This case *was* originally filed in federal district court, and it is the same case today. Even though it was reconfigured to *look like a state-court lawsuit*, this action falls squarely within the bounds of the diversity-jurisdiction statute. *See* 28 U.S.C. § 1332(a)(1) (establishing that federal district courts have original jurisdiction over cases where the amount in controversy [is more than \$75,000] . . . and [when the controversy] is between citizens of different states”).

1. The amount in controversy in this action exceeds \$75,000.

This case is a duplicate of the First Federal Lawsuit. In that case, Jane Doe pled “damages in excess of \$50 million.” *See Doe v. Epstein*, No. 08–80069-KAM (S.D. Fla. filed Jan. 24, 2008) (Compl. ¶ 6). That allegation is now deleted and the Amended Complaint substitutes a generic prayer for relief.⁵ It is clear, however, that Jane Doe still seeks more than \$75,000 in damages.

This case, precisely like the First Federal Action, seeks damages in connection with an alleged assault. (Am. Compl. ¶¶ 16–19.) The Amended Complaint alleges that Jane Doe “has suffered and will continue to suffer severe and permanent traumatic injuries, including mental, psychological, and emotional damages.” (Am. Compl. ¶ 19.) These are the identical injuries Jane Doe asserted in the First Federal Action, and are no less serious simply because pled under a state-court caption. *Cf., e.g., Woods v. Southwest Airlines, Co.*, 523 F. Supp. 2d 812, 820 (N.D. Ill. 2007) (determining, in the context of diversity jurisdiction, that the \$75,000 threshold had been satisfied, and “clearly [surpassed],” based on “the nature of the injuries alleged” in the complaint).

⁵ The Complaint seeks damages for “[more than] . . . \$15,000.” (Am. Compl. ¶ 6.) This boilerplate is routinely used in Florida pleading practice to trigger application of section 26.012, Florida Statutes, the statute that establishes the jurisdictional amount required for filing in Florida’s Circuit Court (as opposed to County Court).

To cement this point, the Eleventh Circuit Court of Appeals has said that “[w]hen [a] complaint does not claim a specific amount of damages, removal from state court is proper if it is facially apparent from the complaint that the amount in controversy exceeds the jurisdictional requirement.” *Williams v. Best Buy Co., Inc.*, 269 F.3d 1316, 1319 (11th Cir. 2001). This case meets that standard, and satisfies the first prong of diversity jurisdiction.

2. There is complete diversity among the real parties to this controversy.

Diversity jurisdiction requires complete diversity. *Carden v. Arkoma Assocs.*, 494 U.S. 185, 187 (1990) (“Since its enactment, we have interpreted the diversity statute to require ‘complete diversity’ of citizenship.” (citing *Strawbridge v. Curtiss*, 7 U.S. (3 Cranch) 267, 267–68 (1806))). See also *MacGinnitie v. Hobbs Group, LLC*, 420 F.3d 1234, 1239 (11th Cir. 2005) (stating that “[c]omplete diversity requires that no defendant in a diversity action be a citizen of the same state as any plaintiff”). As demonstrated below, this case satisfies the statutory requirement of complete diversity.

(a) Plaintiff Jane Doe is a citizen of Florida. (Am. Compl. ¶ 1.)⁶

⁶ Jane Doe may, in fact, be a citizen of *Georgia*, not Florida, as she pled in her Amended Complaint. See *New York Post*, Jul. 1, 2008 (reporting that “On his way into court [for his state-court guilty plea on June 30], Epstein was served with a copy of a lawsuit by Doe, *who has since moved to another state.*”); Jane Doe Depo. at 77, 112 (indicating that

(b) Defendant Jeffrey Epstein is a citizen of the U.S. Virgin Islands.⁷

(c) Defendant [REDACTED] is a citizen of New York. (Am. Compl. ¶ 5.)

3. Defendant [REDACTED] was fraudulently joined to defeat diversity.

“A non-diverse defendant who is fraudulently joined does not defeat diversity because his citizenship is excluded from the diversity calculus.” *Shenkar v. Money Warehouse, Inc.*, No. 07-20634-CIV, 2007 WL 3023531, at *1 (S.D. Fla.

her twin sister lives with her mother in Georgia); Affidavit of [REDACTED], at ¶ 1 (stating, “I am the mother and natural guardian for Jane Doe #1” with jurat executed in Georgia before a Georgia notary), DE 4-2, *Jane Doe No. 1 v. Epstein*, Case No. 08-80069-Civ-Marra (1/29/08); Intervenor’s Complaint, at ¶ 2 (filed by “Jane Doe’s Mother” and stating that “*Jane Doe’s Mother is a citizen and resident of the State of Georgia.*”), DE 5-2, *Jane Doe No. 1 v. Epstein*, Case No. 08-80069-Civ-Marra (1/29/08); Petition for Removal of Disability of Non-Age, at ¶¶ 1, 2, 7 (filed “on behalf of S.D.G.,” alleging that “The mother is [REDACTED], and her address is *Ga.*,” and stating that “S.D.G. is also the unnamed party in a lawsuit filed by her father on her behalf in the U.S. District Court for the Southern District of Florida, Case No. 08-80069, which was filed without the consent of the mother”), *In re Sandberg v. Gonzalez*, Case No. 50 2008 DR 001141 (Palm Beach Co. Family Ct.) (1/31/08). If this turns out to be the case, there is complete diversity, regardless of [REDACTED] citizenship. Although the Eleventh Circuit has recently indicated that a district court may not conduct jurisdictional discovery under such circumstances, another division of this Court has since allowed it. *Compare Lowery v. Ala. Power Co.*, 483 F.3d 1184, 1215-16, 1221 (11th Cir. 2007) (holding that jurisdictional discovery to determine citizenship upon removal is inappropriate), *with Calixto v. BASF Constr. Chemicals, LLC*, slip op., Case No. 07-60077-CIV-ZLOCH, 2008 WL 1840717, *1 (S.D. Fla. Apr. 22, 2008) (ordering that parties “shall engage in jurisdictional discovery for the Court to determine the citizenship of BASF and whether it has subject-matter jurisdiction over this action”).

⁷ The Amended Complaint erroneously states that Jeffrey Epstein is a citizen of New York.

Oct. 15, 2007) (Moreno, J.) (*citing Riley v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 292 F.3d 1334, 1337 (11th Cir. 2002)); *accord, e.g., Tedder v. F.M.C. Corp.*, 590 F.2d 115, 117 (5th Cir. 1979) (denying motion to remand where two resident defendants were joined for the fraudulent purpose of defeating federal jurisdiction). In this case, the plaintiff relies on her original allegations to support three causes of action against [REDACTED]: civil conspiracy (Am. Compl. ¶¶ 20–23); Intentional Infliction of Emotional Distress (Am. Compl. ¶¶ 23–28); and civil RICO (Am. Compl. ¶¶ 29–34). These allegations, however, do not support these claims, or any other theory of liability that would allow recovery against [REDACTED]. *Cf. Parks v. The New York Times Co.*, 308 F.2d 474, 477 (5th Cir. 1962) (observing that “determination of fraudulent joinder is to be based on whether there was a *real intention on colorable grounds* to procure a joint judgment”) (emphasis added).⁸

(a) Nonresident defendants have a right of removal.

The removal statute was enacted specifically “to protect defendants.” *Legg v. Wyeth*, 428 F.3d 1317, 1325 (11th Cir. 2005). *Cf., e.g., Picquet v. Amoco Prod. Co.*, 513 F. Supp. 938, 941 (M.D. La. 1981) (explaining that courts developed the fraudulent-joinder doctrine to protect “the right [of removal] granted to

⁸ In *Bonner v. City of Prichard*, 661 F.2d 1206, 1207 (11th Cir. 1981) (en banc), the Eleventh Circuit Court of Appeals adopted as binding precedent all decisions of the former Fifth Circuit rendered prior to October 1, 1981.

[defendants] by . . . Congress”). In this case, by reconstituting her original federal lawsuit and refileing it in state Court, the plaintiff has clearly sought to avoid the strictures of the mandatory stay of this case that federal law requires under 18 U.S.C. § 3509(k).⁹

In federal court, pursuant to 18 U.S.C. § 3509(k), this action must be automatically stayed pending final disposition of an ongoing parallel criminal action against Mr. Epstein. *See* 18 U.S.C. § 3509(k) (providing that a parallel civil

⁹ By filing in state court, the plaintiff’s attorney has also evidently sought to avoid the clear command of our local rules forbidding public comment about the merits of a pending lawsuit. *Compare* S.D. Fla. Local Rule 77.2(7) (“A lawyer or law firm associated with a civil action shall not during its investigation or litigation make or participate in making an extrajudicial statement, other than a quotation from or reference to public records, which a reasonable person would expect to be disseminated by means of public communication if there is a reasonable likelihood that such dissemination will interfere with a fair trial and which relates to (a) Evidence regarding the occurrence or transaction involved. (b) The character . . . of a party (d) The lawyer’s opinion as to the merits of the claims”), *with* Ricci~Leopold Home Page, <http://www.riccilaw.com> (click on “Breaking News,” then access the hyperlink entitled, *03/13/08 - Consumer Justice Attorney Ted Leopold Files Case to aid Jane Doe in seeking justice against sexual predator Jeffrey Epstein and his associates.*) (describing character of party defendant Epstein as a “sexual predator” (a term defined by Florida criminal statutes) and quoting the plaintiff’s attorney “Ted Leopold, managing partner” as characterizing Epstein as “an extremely powerful and wealthy man,” with “vast resources,” who acted “in the vilest way” at his “lavish mansion” with “lurid fantasies” and inflicting “untold damage,” and opining that he should “be held accountable;” also quoting the plaintiff’s attorney as opining that “[t]his case is both about justice and making sure that a wealthy and powerful man knows that he is not above the law;” also quoting the plaintiff’s attorney’s view of the evidence that plaintiff “continues to endure emotional trauma daily”) (Web site last visited July 17, 2008).

action arising from an alleged sexual assault of a minor “*shall be stayed* until the end of all phases of [any] criminal action”) (emphasis added). In this case, there is a parallel federal criminal grand jury action pending in the Southern District of Florida, *In re Grand Jury*, No. FGJ 07-103(WPB) (S.D. Fla.), which arises out of the same allegations pled here. Thus, in resorting to fraudulent joinder, the plaintiff has sought to avoid any application of this otherwise controlling statute. *Cf. Doe v. Francis*, No. 5:03 CV 260 MCR/WCS, 2005 WL 517847, at *1-2 (N.D. Fla. Feb. 10, 2005) (staying civil diversity action over plaintiffs’ objections on grounds that “the language of 18 U.S.C. § 3509(k) is clear that *a stay is required* in a case . . . where a parallel criminal action is pending which arises from the same occurrence involving minor victims”) (emphasis added).

Even outside the context of a mandatory federal statute, “the Supreme Court [has] admonished [that] ‘the Federal courts should not sanction devices intended to prevent a removal to a Federal court where one has that right, and should be equally vigilant to protect the right to proceed in the Federal court.’” *Legg*, 428 F.3d at 1325 (citing *Wecker v. Nat’l Enameling & Stamping Co.*, 204 U.S. 176, 186 (1907)). *See also id.* (observing that “Congress ‘did not extend [to defendants a right of removal] with one hand, and with the other give plaintiffs a bag of tricks

to overcome it” (quoting *McKinney v. Bd. of Trustees of Maryland Cmty. Coll.*, 955 F.2d 924, 928 (4th Cir. 1992))).

To protect a nonresident defendant’s right of removal, a federal court will “determine the matter of jurisdiction” by examining “*the true situation* both as to parties and causes of action.” *Bernblum v. Travelers’ Inc. Co.*, 9 F. Supp. 34, 35 (W.D. Mo. 1934) (emphasis added). *See also id.* (observing that “[t]he federal courts will . . . strike out the fiction injected into a case by a party to prevent removal”). In accordance with these principles, a plaintiff cannot destroy diversity jurisdiction simply by conjuring up a nondiverse defendant; there must be at least some “possibility that the state law might impose liability on [the nondiverse] defendant under the circumstances alleged in the complaint.” *Florence v. Crescent Res., LLC*, 484 F.3d 1293, 1299 (11th Cir. 2007) (citations omitted). *See also, Holloway v. Morrow*, No. 07-0839-WS-M, 2008 WL 401305, at *5 (S.D. Ala. Feb. 11, 2008) (emphasizing that “[t]he potential for legal liability *must be reasonable, not merely theoretical*” (quoting *Legg v. Wyeth*, 428 F.3d 1317, 1325 n.5 (11th Cir. 2005))) (emphasis added).

In this case, the plaintiffs have tried to whip Jane Doe’s original, one-defendant complaint into a froth that looks non-federal. *Cf. Owens v. Swan*, 962 F. Supp. 1436, 1439 (D. Utah 1997) (noting that “although plaintiffs’ amended

complaint contains four claims for relief, the first and second claims state *only one cause of action*)” (emphasis added). Using her original allegations *and adding nothing*, Jane Doe has tried to add claims against [REDACTED] for civil conspiracy (Am. Compl. ¶¶ 20–23), Intentional Infliction of Emotional Distress (Am. Compl. ¶¶ 24–28), and civil RICO (Compl. ¶¶ 29–34) in order to append a nondiverse defendant to her Complaint. These claims, however, are untenable under Jane Doe’s own allegations, and therefore cannot be used to destroy diversity jurisdiction.

(b) There is no possibility that the plaintiff can establish a cause of action against [REDACTED] under Florida law.

(i) The conspiracy claim against Robson must fail.

As a general rule, “[a]n actionable conspiracy [under Florida law] requires an *actionable underlying tort or wrong*.” *Wright v. Yurko*, 446 So. 2d 1162, 1165 (Fla. 5th DCA 1984) (citations omitted) (emphasis added).¹⁰

¹⁰ This case is governed by the general rule. *Cf. Churruca v. Miami Jai-Alai, Inc.*, 353 So. 2d 547, 550 (Fla. 1977) (noting that while there is “ordinarily . . . no independent tort for conspiracy,” there is a narrow exception to this rule when “the plaintiff can show some *peculiar power of coercion* possessed by the conspirators by virtue of their combination”) (emphasis added). *See generally Liappas v. Augoustis*, 47 So. 2d 582, 583 (Fla. 1950) (observing that “instances of conspiracy which is in itself an independent tort *are rare and should be added to with caution*” (quoting *Fleming v. Dane*, 22 N.E.2d 609, 611, (Mass. 1939))) (emphasis added). Plainly, this case involves the general rule, not the narrow exception, because *only one person* could have caused Jane Doe’s injuries. *Cf. Martin v. Marlin*, 529 So. 2d 1174, 1179 (Fla. 3d DCA 1988) (upholding

Here, Jane Doe cannot assert a cause of action for “violation of Chapter 800, Florida Statutes” (Am. Compl. ¶ 18) because there is *no private right of action* under that Chapter. *See generally Am. Home Assurance Co. v. Plaza Materials Corp.*, 908 So. 2d 360, 374 (Fla. 2005) (observing that “not every statutory violation carries a civil remedy” (citing *Villazon v. Prudential Health Care Plan, Inc.*, 843 So. 2d 842, 852 (Fla. 2003))). *See also, e.g., Miami Herald Publ’g Co. v. Ferre*, 636 F. Supp. 970 (S.D. Fla. 1985) (King, C.J.) (holding that violation of Florida’s criminal extortion statute does not give rise to a civil cause of action for damages); *Mantooth v. Richards*, 557 So. 2d 646, 646 (Fla. 4th DCA 1990) (per curiam) (affirming dismissal of plaintiff’s claim for parental kidnapping where “the mentioned statutes concern only criminal violations *and do not afford a civil remedy*”) (citation omitted) (emphasis added); *Wright v. Yurko*, 446 So. 2d 1162, 1165 (Fla. 5th DCA 1984) (holding that “[a]n act which does not constitute a basis for a cause of action against one person cannot be made the basis for a civil action for conspiracy”).

In this case, Jane Doe’s claim under Count II (civil conspiracy) fails because it derives *exclusively* from Count I (violation of Chapter 800, Florida Statutes). *Cf.*

grant of summary judgment against claim for independent conspiracy, noting that “[w]hen the concerted acts of the defendants do not create a greater harm than if the acts were committed by one person alone, then there can be no recovery”).

Buchanan v. Miami Herald Publ'g Co., 230 So. 2d 9, 12 (Fla. 1969) (holding that where Count I of the complaint had failed to state a cause of action for malicious prosecution, there could be no civil-conspiracy claim in Count II “based on the allegations of Count I”). Because the statute she expressly pleads as the basis for Count I, Chapter 800, Florida Statutes, provides no civil remedy, Jane Doe cannot prevail on Count I. Therefore, she cannot prevail on her claim for conspiracy (Count II) to violate Chapter 800, Florida Statutes (Count I).

(ii) The plaintiff cannot prevail against nondiverse defendant [REDACTED] on her claim for Intentional Infliction of Emotional Distress (IIED).

Even if the plaintiff, for the sake of argument, can assert an IIED claim against Jeffrey Epstein, the plaintiff still does not have a cause of action for IIED against [REDACTED]. *First*, the plaintiff cannot recover damages in connection with her own illegal conduct; and *second*, the plaintiff’s purported IIED claim fails as a matter of law.

1. The plaintiff seeks damages in connection with her own illegal conduct.

The plaintiff concedes that she went to Jeffrey Epstein's house "to give Epstein a massage for monetary compensation." (Am. Compl. ¶ 13.) The plaintiff also concedes, in the guise of an allegation, that ██████████ "brought Jane Doe to Epstein's mansion in Palm Beach" to help the plaintiff execute her own plan. (Am. Compl. ¶ 13.) Yet, the plaintiff's plan was illegal: under Florida law, *it is a crime* "to practice massage" without a license. § 480.047, Fla. Stat. (1997). To say it another way, the plaintiff admits that she went to Mr. Epstein's house to *commit a crime*.

Based on these allegations, it is clear that the plaintiff seeks damages in connection with *her own illegal conduct*; this is enough to support a finding of fraudulent joinder. *See Florence v. Crescent Resources, LLC*, 484 F.3d 1293, 1298 n.3 (11th Cir. 2007) (acknowledging that "under some circumstances, application of an affirmative defense can support a finding of fraudulent joinder). This conclusion is supported by well-established principles.

Under Florida law, a plaintiff cannot recover damages flowing from her own illegal conduct. *See Hall v. Hall*, 93 Fla. 709, 112 So. 622, 628 (1927) (referring to "*the universal rule* of our law that one in a court of justice cannot complain . . . of another's wrong whereof he was a partaker") (internal quotation marks and citation

omitted) (emphasis added); *Turner v. Anderson*, 704 So. 2d 748, (Fla. 4th DCA 1998) (“[N]o public policy should allow appellant to recover damages as a result of engaging in criminal conduct such as occurred in this case.”). *Cf. Ewell v. Daggs*, 108 U.S. 143, 149 (1883) (stating that “[n]o court will lend its aid to a [plaintiff] who founds [a] cause of action upon an immoral or an illegal act”) (quoting *Holman v. Johnson*, 98 Eng. Rep. 1120 (K.B. 1775)); *see also id.* (explaining that this policy is “not for the sake of the defendant, but because [*the courts*] *will not lend their aid to such a plaintiff*” (quoting *Holman*, 98 Eng. Rep. 1120)) (emphasis added); *Balas v. Ruzzo*, 703 So. 2d 1076, 1082 (Fla. 5th DCA 1997) (Harris, J., concurring) (remarking in the context of an action brought against an alleged prostitution house that “the court should continue its tradition of not interceding in civil conflicts involving transactions that are either illegal or are against public policy”).

Based on the foregoing, the plaintiff cannot blame someone else ([REDACTED] [REDACTED]) for the consequences of her own criminal conduct. *Cf. Feld & Sons, Inc. v. Pechner, Dorfman, Wolffe, Rounick and Cabot*, 458 A.2d 545, 552 (Pa. Super. Ct. 1983) (holding that law-firm clients could not recover damages flowing from their own criminal acts, even though clients’ lawyers had suggested the unlawful conduct to begin with). *See also Turner v. Anderson*, 704 So. 2d 748, 751 (Fla. 4th

DCA 1998) (approving reasoning in *Feld & Sons*, holding that “no public policy should allow [a plaintiff] to recover damages as a result of engaging in criminal conduct” where the plaintiff had provided false testimony at an arbitration proceeding).

2. The plaintiff’s IIED claim fails as a matter of law.

To state a cause of action for IIED, a complaint must allege four elements: (1) deliberate or reckless infliction of mental suffering; (2) outrageous conduct; (3) the conduct caused the emotional distress; and (4) the distress was severe. *Metro. Life Ins. Co. v. McCarson*, 467 So. 2d 277, 278 (Fla. 1985). Whether conduct is outrageous enough to support a claim of intentional infliction of emotional distress is a question of law, not a question of fact. *Liberty Mut. Ins. Co. v. Steadman*, 968 So. 2d 592, 595 (Fla. 2d DCA 2007) (citations omitted).

In this case, without reaching the question of “outrage,” the plaintiff has failed to show that [REDACTED] [REDACTED] conduct - - allegedly arranging an illegal sexual massage that the plaintiff herself agreed to perform - - itself caused the plaintiff to suffer any emotional distress. Even if the alleged agreement was fraudulently induced, the plaintiff’s IIED claim flows from Epstein’s alleged conduct, not the joint conduct of Robson and Doe in planning the massage.

(iii) The plaintiff cannot prevail on her claim for civil remedies for criminal practices or racketeering (“civil RICO”) pled in Count IV.

A cause of action under section 772.104, Florida Statutes (“Civil Remedies for Criminal Practices”) requires a showing of *direct injury*. Even assuming for the sake of argument that Jane Doe can establish that the defendants engaged in a “pattern of criminal activity,” she cannot establish that she was directly injured by those activities.

Section 772.104 allows someone to bring a civil RICO claim only if “he or she has been injured *by reason of*” any RICO violation. § 772.104, Fla. Stat. (2007). Here, the allegations in Count IV, even if they are true, do not add up to a civil RICO claim because there is no proximate cause between the purported “pattern of criminal activity” and Jane Doe’s alleged injuries.

In a doomed attempt to satisfy the extremely high burden of pleading civil RICO under Florida law, the Amended Complaint lists a series of violations rooted in Florida’s prostitution statutes. (Am. Compl. ¶ 31.) According to the Amended Complaint, the defendants participated in a criminal enterprise . . . or conspir[acy]” (Am. Compl. ¶ 30) over an unspecified length of time “to repeatedly find and bring [Jeffrey Epstein] underage girls . . . in order for Epstein to solicit, coerce, entice, compel, or force such girls in acts of prostitution and/or lewdness” (Am.

Compl. ¶ 32). The alleged “pattern of criminal activity” comprises violations of Chapter 796, Florida Statutes—the chapter that proscribes various crimes of prostitution.¹³

These allegations do not tie directly into Jane Doe’s alleged psychic injuries. In contrast to a cognizable RICO claim, this action concerns only an isolated occurrence. More important, the alleged injuries in this case are pled to have resulted from an alleged sexual assault, an assault “in violation of Chapter 800 of the Florida Statutes” (Am. Compl. ¶ 18)—*not* anything having to do with the facilitation of prostitution, or more succinctly, the violation of Florida’s prostitution law.

Civil RICO claims are extraordinarily difficult to plead successfully. There are examples in the case law of RICO claims stemming from a prostitution enterprise, but they are vastly different from what plaintiff pleads here. They involve, for example, prostitutes who sued a *house of prostitution* (as an “enterprise”) for inflicting systematic and repetitive abuse *on them, over time*. See *Balas v. Ruzzo*, 703 So. 2d 1076, 1077 (Fla. 5th DCA 1997) (offering an example of a civil RICO claim against the operators of an alleged “house of prostitution,”

¹³ The Amended Complaint alleges a “pattern of criminal activity” comprising the following criminal violations: §§ 796.03, 796.07(2)(f), 796.07(2)(h), 796.045, and 796.04, Fla. Stat. (Am. Compl. ¶ 31.)

where petitioners alleged that they had “suffered emotional pain, anguish, humiliation, insult, indignity, loss of self-esteem, inconvenience, hurt and emotional distress” as a result of being forced repeatedly, over time, to “perform sexual acts to retain their employment”). Here, even if the Amended Complaint can be read to plead that the defendants schemed to solicit other massages from other people (*see, e.g.*, Am. Compl. ¶¶ 9, 11, 12, 32), those activities are not alleged in any way to have impacted *Jane Doe*. *Cf., e.g., Palmas Y Bambu, S.A. v. E.I. Dupont De Nemours & Co., Inc.*, 881 So. 2d 565, 570 (Fla. 3d DCA 2004) (holding that “indirect injuries, that is injuries sustained not as a direct result of predicate acts . . . *will not allow recovery under Florida RICO.*” (quoting *O'Malley v. St. Thomas Univ., Inc.*, 599 So. 2d 999, 1000 (Fla. 3d DCA 1992))) (emphasis added).

Because the Amended Complaint does not satisfy the direct-injury requirement under Florida’s RICO law, Jane Doe has failed to allege a cause of action against [REDACTED] for violation of section 772.103, Florida Statutes.

B. This Notice satisfies the procedural requirements of 28 U.S.C. § 1446.

1. This notice of removal is timely.

In accordance with 28 U.S.C. § 1446, this notice of removal is timely. Only defendant Epstein has been served with process. Defendants [REDACTED]

have not yet been served. In a multi-defendant lawsuit, removal is timely when effected within 30 days after the last defendant is served. *See Hill Dermaceuticals, Inc. v. RX Solutions, United Health Group, Inc.*, No. 6:08-cv-330-Orl-31KRS, 2008 WL 1744794, at *3 (M.D. Fla. Apr. 11, 2008) (concluding that removal petition was timely where it was filed within 30 days after the last defendant was served).

2. Notice has been given, and state-court papers have been filed.

In accordance with 28 U.S.C. § 1446(d), defendants have served this Notice of Removal on July 18, 2008. All papers filed in State Court are attached to this Removal Petition.

3. There is unanimity among the defendants.

In accordance with 28 U.S.C. § 1446(b) the undersigned are authorized to represent that all of the defendants join this Petition and consent to removal.

Conclusion

Because this is a civil action between citizens of different states, excluding any fraudulently joined parties, and the amount in controversy exceeds \$75,000, exclusive of interests and costs, this Court has original jurisdiction over this action pursuant to 28 U.S.C. § 1332(a)(1).

WHEREFORE, the Defendants, Jeffrey Epstein, [REDACTED] and [REDACTED] remove this case from Palm Beach Circuit Court to the United States District Court for the Southern District of Florida.

Respectfully submitted,

LEWIS TEIN, P.L.
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Coconut Grove, Florida 33133
Tel: 305 442 1101
Fax: 305 442 6744

By: 

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Fla. Bar No. 623740

[REDACTED]
MICHAEL R. TEIN
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[REDACTED]

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By: Jack A. Goldberger
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[REDACTED]

Attorneys for Defendant Jeffrey Epstein

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing document is being served this day,
July 18, 2008, on counsel of record identified on the service list by U.S. Mail.



Michael R. Tein

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EXHIBIT A



IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA
CASE NO. 2006 CF09454AXX
STATE OF FLORIDA,

-vs-

JEFFREY EPSTEIN,
Defendant.

DEPOSITION OF [REDACTED]

Wednesday, February 20, 2008

2:00 p.m. - 4:30 p.m.
Palm Beach County Courthouse
205 North Dixie Highway
West Palm Beach, Florida 33401

COPY

Reported By:
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13
14 ALSO PRESENT:
ON BEHALF OF THE WITNESS: THEODORE J. LEOPOLD, ESQ.
15 KEITH J. BRETT, DIRECTOR OF MULTIMEDIA DIVISION,
LEGAL-EZE

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I N D E X

WITNESS:

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[REDACTED]

DIRECT EXAMINATION

4

BY MR. TEIN:

- - -

N O E X H I B I T S M A R K E D

- - -

.....CERTIFIED QUESTIONS.....

Page	Line
53	22
55	1
59	2
111	14
112	2



1 my questions, will you just please let me know?

2 A. Yes.

3 Q. And if at any time you're not feeling well
4 or something like that, you'll tell us, right?

5 A. Yes.

6 Q. Do you feel okay today?

7 A. Yes.

8 Q. Not taking any alcohol or drugs or anything
9 like that, right?

10 A. No.

11 Q. So you feel ready to have your deposition
12 taken?

13 A. Yes.

14 Q. [REDACTED] what is your address?

15 A. I'm currently living at my aunt's house and
16 I don't know it off the top of my head.

17 Q. Where is it?

18 A. In Jupiter.

19 Q. Who is your aunt?

20 A. [REDACTED]

21 Q. Who else is living there?

22 A. [REDACTED] my uncle.

23 Q. Anyone else living there?

24 A. No.

25 Q. The contempt motion that your mother filed



1 against your father regarding your fifty million-dollar
2 lawsuit against Jeffrey Epstein says that you live with
3 your aunt and uncle and have been living there; is that
4 correct?

5 A. Yes.

6 Q. How long have you been living with your
7 aunt and uncle?

8 A. Since my father kicked me out.

9 Q. That was Thanksgiving of this past year?

10 A. Yes, sir.

11 Q. Okay. Didn't your firefighter boyfriend
12 ██████████ get an apartment for the two of you?

13 A. No, sir. He has an apartment, but by
14 himself.

15 Q. Did he get an apartment for the two of you
16 to live in?

17 A. No, sir.

18 Q. Are you planning to move in with him?

19 A. Maybe one day in the future.

20 Q. Do you have a plan to move in with him
21 presently?

22 A. No.

23 Q. Have you been to the apartment that you and
24 ██████████ have discussed moving in together?

25 A. I have been to the apartment.



1 Q. Where is that?
2 A. Palm Beach Lakes.
3 Q. Have you spent the night over there?
4 A. No, sir.
5 Q. Do you know the address there?
6 A. I do not.
7 Q. Isn't your sister [REDACTED] planning on living
8 with you and [REDACTED]?
9 A. No.
10 Q. [REDACTED] you know that this court case is a
11 criminal prosecution, correct?
12 A. Correct.
13 Q. And you know that it's a criminal
14 prosecution against a man who has no criminal background.
15 Do you know that?
16 A. I do now.
17 Q. You agree that court is a very serious
18 matter?
19 A. Yes.
20 Q. And you're here with your lawyer
21 Mr. Leopold, right?
22 A. Yes.
23 Q. And you know that Mr. Leopold recently
24 filed a lawsuit in federal court against Jeffrey Epstein,
25 seeking fifty million dollars.

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Page 8

1 MR. LEOPOLD: Let me just object.

2 [REDACTED] let me instruct you. Anything that
3 you have learned through conversations between you
4 and me are protected. So if you know any of that
5 information outside of those discussions, you may
6 answer. But if the only way you know it is
7 through our discussions, do not answer that
8 question.

9 BY MR. TEIN:

10 Q. [REDACTED] you know that Mr. Leopold recently
11 filed a lawsuit in federal court on your behalf against
12 Jeffrey Epstein seeking fifty million dollars?

13 MR. LEOPOLD: Same objection.

14 If you know the answer to that outside of
15 our discussions, you may answer. If it is the
16 only way that you know the answer is through our
17 discussions, do not answer that question.

18 THE WITNESS: Okay.

19 MR. LEOPOLD: Attorney/client privilege.

20 BY MR. TEIN:

21 Q. You can answer the question unless --

22 MR. LEOPOLD: Same objection.

23 MR. TEIN: Let me finish.

24 MR. LEOPOLD: Excuse me. We're --

25 MR. TEIN: No. Let me finish.

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1 MR. LEOPOLD: Lewis, we're not going to do
2 that.

3 MR. TEIN: My name is not Lewis.
4 I'm going to finish my question. Okay?

5 MR. LEOPOLD: Do not answer until you hear
6 from me.

7 BY MR. TEIN:

8 Q. Other than conversations that you have had
9 with Mr. Leopold -- I'm not asking about that -- are you
10 aware that Mr. Leopold has filed a lawsuit in federal
11 court seeking fifty million dollars from Jeffrey Epstein
12 on your behalf?

13 MR. LEOPOLD: Same objection.
14 Anything that you learn through
15 conversations between you and me, do not answer.
16 Those are protected. If you know through any
17 other realm of knowledge, you may answer.

18 THE WITNESS: No.

19 BY MR. TEIN:

20 Q. You have no idea that Mr. Leopold filed a
21 fifty million-dollar lawsuit on your behalf against
22 Jeffrey Epstein?

23 MR. LEOPOLD: Same objection.

24 Do not answer that question if it's through
25 discussions that you and I had. Outside of that,



1 you may answer. So do not answer that question if
2 that is the only basis by which you understand
3 that answer.

4 THE WITNESS: No.

5 BY MR. TEIN:

6 Q. You didn't know that?

7 MR. LEOPOLD: Don't answer that question.
8 Again, it's attorney/client privilege. Any
9 information you've learned through conversations
10 between you and I are protected. If you know it
11 through any other realm, you may answer.

12 MR. TEIN: Are you going to say that for
13 every question in the deposition, Mr. Leopold?

14 MR. LEOPOLD: When you ask improper
15 questions like that without the proper --

16 MR. TEIN: You're going to stop your
17 speaking objections right now. Okay?

18 MR. LEOPOLD: Without the proper --

19 MR. TEIN: You need to stop your speaking
20 objections.

21 Let's continue.

22 MR. LEOPOLD: Counsel, you just asked me a
23 question and I'm going to state it on the
24 record --

25 MR. TEIN: You need to stop your speaking



1 objections. Check your rules.

2 MR. LEOPOLD: Excuse me. For the record,
3 Counsel asked me a question. I'll state the
4 answer on the record. He asked me the question am
5 I going to be answering that way throughout the
6 deposition. So long as there's improper
7 foundation and predicate asked by the attorney, I
8 will protect my client and I make the record where
9 appropriate. If counsel wishes to ask an
10 appropriate worded question with the proper
11 foundation and predicate, I will certainly allow
12 the client to answer the question.

13 MR. GOLDBERGER: Why don't you just state
14 attorney/client privilege and just be done with
15 it?

16 MR. LEOPOLD: I want the record to be
17 clear.

18 MR. TEIN: You want to waste time is what
19 you want to do.

20 You were supposed to be here this morning
21 and you totally broke the deal, the agreement that
22 you had with us if your hearing got cancelled.

23 But let's move on and maybe you'll stop
24 obstructing this deposition.

25 MR. LEOPOLD: I think the record is very



1 clear where we stand thus far.

2 Is there a recording taken of this
3 deposition?

4 THE COURT REPORTER: Yes.

5 MR. LEOPOLD: Just make sure that's
6 preserved.

7 BY MR. TEIN:

8 Q. Go to Exhibit 20-01 -- well, before you do
9 that, [REDACTED] are you aware that a lawyer named Jeffrey
10 Herman filed a lawsuit on your behalf, yes or no?

11 MR. LEOPOLD: Objection.

12 Any conversations that you and I have had
13 regarding that, if that is the only way by which
14 you understand how to answer that question, do not
15 answer. It's attorney/client privilege, as well
16 as any conversations you may have had with the
17 attorney from Miami. That is also attorney/client
18 privilege. And I'm assuming --

19 MR. TEIN: You're actually wrong about the
20 attorney/client privilege.

21 MR. LEOPOLD: I'm assuming Counsel is not
22 asking you to divulge attorney/client --

23 MR. TEIN: Of course not.

24 BY MR. TEIN:

25 Q. [REDACTED] are you aware that Jeffrey Herman,



1 an attorney, filed a fifty-million-dollar lawsuit on your
2 behalf against Jeffrey Epstein, yes or no?

3 MR. LEOPOLD: Same objection.

4 MR. TEIN: We've heard the objection 10
5 times already.

6 MR. LEOPOLD: Counsel, excuse me.

7 MR. TEIN: Just say attorney/client
8 privilege. Stop interrupting my questions.

9 MR. LEOPOLD: I'm entitled to make an
10 objection for the record, which I'm doing, and
11 I'll make the same objection. And if it calls for
12 attorney/client privilege, any conversations you
13 and I have had, do not answer the question.

14 And I think that it might be appropriate,
15 for the record, to ask questions via [REDACTED]
16 [REDACTED] as opposed to [REDACTED] I think that
17 would be more appropriate for this deposition.

18 BY MR. TEIN:

19 Q. Go ahead. Please answer yes or no.

20 A. Yes.

21 Q. Thank you.

22 In fact, you know that Mr. Herman held a
23 press conference after he filed the fifty-million-dollar
24 lawsuit on your behalf, don't you?

25 A. After it happened.



1 Q. You know that he had a press conference,
2 don't you, yes or no?

3 A. Yes.

4 Q. In fact, let's go to Exhibit 20-01.

5 MR. GOLDBERGER: Look behind you. You'll
6 see it.

7 BY MR. TEIN:

8 Q. Have you ever seen that picture before?

9 A. Yes.

10 Q. Is that a picture of your father, your
11 stepmother and Mr. Herman at the press conference
12 regarding your lawsuit?

13 A. Yes.

14 Q. Now you know that this is a very serious
15 matter, don't you?

16 MR. LEOPOLD: Asked and answered.

17 Objection.

18 MR. GOLDBERGER: All right. You can
19 object. You're representing a witness here,
20 Mr. Leopold. You can object on privilege grounds.
21 You cannot make legal objections. You have no
22 standing to do so.

23 MR. LEOPOLD: I'm going to make them and
24 then --

25 MR. GOLDBERGER: We're --



1 MR. LEOPOLD: We're going to leave or we're
2 going to take a break, because his demeanor is not
3 appropriate. There's no reason to have this kind
4 of demeanor. If you want to have this kind of
5 demeanor with me --

6 MR. TEIN: You are obstructing this
7 deposition.

8 MR. GOLDBERGER: Why don't you guys go
9 outside and just talk about --

10 MR. LEOPOLD: She -- her job is very
11 difficult and she's not going to be able to take
12 us both talking at the same time.

13 MR. GOLDBERGER: Off the record.

14 MR. LEOPOLD: We're not going off the
15 record, Jack. We're not, Jack. Her job is very
16 difficult. I'm going to make the record.

17 I don't think it is appropriate, especially
18 in the small confines of this room, to be very
19 aggressive with this young lady.

20 MR. TEIN: That's not happening. Stop,
21 stop actually --

22 MR. LEOPOLD: If you're going to interrupt
23 me, we're going to cancel this deposition --

24 MR. TEIN: Stop misrepresenting.

25 THE COURT REPORTER: I need one at a time,



1 no matter who it is.

2 MR. LEOPOLD: I think we're going to take a
3 break. Perhaps you might want to talk to your
4 co-counsel --

5 MR. TEIN: I don't need to talk to him.

6 MR. LEOPOLD: But we're going to take a
7 break.

8 MR. TEIN: We're not taking a break unless
9 the witness needs a break.

10 You're obstructing this deposition, Ted.

11 MR. LEOPOLD: Come on, [REDACTED]

12 You all want to continue in this
13 demeanor --

14 MR. TEIN: You're obstructing the
15 deposition. Stop making speeches. We're not
16 discussing this with you. The questions are to
17 your client. Go take your five-minute break.

18 MR. LEOPOLD: Fine. We need to make sure
19 the record's clear and clean.

20 And I want to make sure, as I've already
21 asked you -- I know that you're one of the best in
22 town -- that this audio -- this needs to be
23 preserved. Okay?

24 MR. TEIN: Go take your five-minute break,
25 Mr. Leopold, now.



1 You were supposed to be here at nine a.m.;
2 it's now after two. Take your break and come
3 back.

4 MR. LEOPOLD: Okay. If the demeanor keeps
5 up, we will not be here beyond those five minutes.

6 MR. TEIN: Take your break and come back.

7 MR. LEOPOLD: Okay. So I suggest that you
8 relax.

9 MR. TEIN: I suggest that you take your
10 break.

11 MR. GOLDBERGER: Let them take that
12 five-minute break.

13 MR. LEOPOLD: But I would suggest that you
14 take deep breaths.

15 MR. TEIN: Suggest whatever you want. Go
16 take a break.

17 (Thereupon, a recess was taken.)

18 BY MR. TEIN:

19 Q. [REDACTED] you agree that giving testimony
20 today at your deposition is something very serious, don't
21 you?

22 A. Yes.

23 Q. And you respect the court, don't you?

24 A. Yes.

25 Q. Let me show you Exhibit 31-001. Can you



1 read that out loud, please.

2 A. Okay. What do you want?

3 Q. Will you read that out loud, please.

4 A. Oh.

5 Q. Thank you.

6 A. Lol hah my baddd...lol yah i got some
7 stupid court shit on the 20th...bullshit...and damn you
8 still have court shit with him? Like after so long wow
9 im sorry... well yah well we will definitely havta make
10 plans for sure..because i miss u tons times a million and
11 no no no i love you...o and p.s. i love ur default pic
12 niggaa. Muah xo.

13 Q. Did you send that message last week to a
14 friend of yours on MySpace?

15 A. I wouldn't know. There's no dates and I've
16 deleted that MySpace, so --

17 Q. We're going to talk about that in a second.

18 A. Okay.

19 Q. Did you send that message last week --

20 A. Right.

21 Q. Let me finish my question.

22 Did you send that message last week to a
23 friend of yours on MySpace?

24 A. I wouldn't know the date, but obviously,
25 it's to a friend.



1 Q. Did you send that message to a friend of
2 yours on MySpace?

3 A. Sure, yes.

4 Q. Were you referring to this deposition?

5 A. Yes.

6 Q. Do you find the term n-i-g-g-e-r offensive?

7 A. That's not anywhere in there.

8 Q. What word did you use in there?

9 MR. LEOPOLD: Where are you referring to,
10 Counsel? There's 20 plus words in there.

11 MR. TEIN: Don't make a speaking objection.

12 THE WITNESS: Are you referring to
13 anything --

14 MR. LEOPOLD: No, [REDACTED] Don't -- don't --
15 let him ask you the question.

16 BY MR. TEIN:

17 Q. What question were you asking, [REDACTED] ?

18 MR. LEOPOLD: She doesn't ask questions.
19 You ask the questions. What is the question
20 pending?

21 BY MR. TEIN:

22 Q. [REDACTED] what is the last word on there in
23 the text of your message before the closing?

24 A. Niggaa.

25 Q. Don't you find that term offensive?



1 A. No.

2 MR. LEOPOLD: Can you spell it for the

3 record, please.

4 THE WITNESS: N-i-g-g --

5 MR. TEIN: No, no, no. You are not going

6 to be asking questions.

7 MR. LEOPOLD: I'm not asking questions.

8 I'm asking for the record the word to be spelled,

9 because we don't have a video here today.

10 MR. TEIN: These exhibits are part of the

11 record. You --

12 MR. LEOPOLD: Well, it's not marked as an

13 exhibit.

14 MR. TEIN: Stop interrupting me,

15 Mr. Leopold. I have marked and identified as an

16 exhibit and you will get it.

17 MR. LEOPOLD: There has been no

18 identification of this document in the record.

19 MR. TEIN: Mr. Leopold, stop interrupting

20 this deposition.

21 MR. LEOPOLD: What is the exhibit number

22 marked for identification?

23 MR. TEIN: 31-001.

24 MR. LEOPOLD: Do we have copies? Is it on

25 the record anywhere?

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1 BY MR. TEIN:

2 Q. Let me ask you, [REDACTED] did you in fact
3 write your friend this message about this deposition?

4 A. Yes.

5 Q. So you wrote your friend that this
6 deposition is stupid court s-h-i-t, correct?

7 A. Yes.

8 Q. Because you think this deposition is stupid
9 court s-h-i-t, don't you?

10 A. No.

11 Q. You wrote that to your friend, didn't you?

12 A. Yes.

13 Q. You think that court is stupid, don't you?

14 A. In some cases.

15 Q. And you think that court is bull s-h-i-t,
16 don't you?

17 A. No.

18 Q. And you think this deposition is bull
19 s-h-i-t, don't you?

20 A. No.

21 Q. You wrote that to your friend, didn't you?

22 MR. LEOPOLD: Objection. Asked and
23 answered.

24 MR. TEIN: That's not an objection.

25 BY MR. TEIN:



1 Q. You wrote that to your friend, didn't you?

2 MR. LEOPOLD: Objection. Asked and
3 answered, for the fourth time.

4 MR. TEIN: You are improperly objecting,
5 Mr. Leopold. You have no grounds to object. And
6 that's not an objection.

7 MR. LEOPOLD: It is an objection.

8 MR. TEIN: Then terminate the deposition if
9 you think it's been asked and answered.

10 MR. LEOPOLD: Counsel, I am not precluded
11 from just making an objection to the form of the
12 question. As the courts well know, and if you
13 practice here in West Palm Beach, many of the
14 judges require you to set the objection with
15 specificity. And I will do that. And if you
16 don't want me to, you can make the record. But I
17 will do that.

18 MR. TEIN: Here's what we'll do, Ted. You
19 can -- I will allow you to reserve an objection to
20 form for every single one of my questions.
21 Otherwise, all you're doing is obstructing.

22 MR. LEOPOLD: I won't do that.

23 MR. TEIN: Of course; because you want to
24 obstruct.

25 MR. LEOPOLD: All right.



1 BY MR. TEIN:

2 Q. [REDACTED] you think that giving testimony
3 today, under oath, is bull s-h-i-t, don't you?

4 A. No.

5 Q. And you wrote that to your friend on
6 MySpace last week, didn't you?

7 MR. LEOPOLD: Objection. Asked and
8 answered.

9 THE WITNESS: No, I did not.

10 BY MR. TEIN:

11 Q. You didn't write this exhibit?

12 A. I wrote that, but I didn't write what you
13 said.

14 Q. You wrote in this exhibit, "I got some
15 stupid court s-h-i-t on the 20th. Bull s-h-i-t." Didn't
16 you write that?

17 A. Yes.

18 Q. Referring to this deposition, didn't you?

19 A. Referring to the court. I was later
20 informed that it was a deposition.

21 Q. I'm going to ask you some questions now
22 about what happened when you went to Jeff Epstein's house
23 three years ago. Okay?

24 A. Uh-huh.

25 Q. When the police interviewed you one month



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1 after you went to Epstein's house, you swore on your
2 mother's grave that you and Epstein did not engage in sex
3 of any kind?

4 A. Yes.

5 Q. Didn't you tell that to the police?

6 A. Yes. And I will continue. I have never
7 had sex with him.

8 Q. Did what happened upstairs at Jeff
9 Epstein's house take you completely by surprise, [REDACTED]?

10 A. Yes.

11 Q. Now the civil complaint that you filed
12 against Mr. Epstein for fifty million dollars alleged
13 that you were totally shocked by what happened when you
14 got there.

15 A. Yes.

16 Q. Were you totally shocked by what happened
17 when you got to Epstein's house?

18 A. Yes.

19 Q. You didn't expect it at all, did you?

20 A. No.

21 Q. You had absolutely no idea why your friend
22 [REDACTED] was taking you to Epstein's house, right?

23 A. I was informed it was a massage.

24 Q. All you thought that it was going to be was
25 a massage, correct?

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1 A. Yes.

2 Q. Before you got to Epstein's house [REDACTED]
3 never said anything to you on the telephone about sexual
4 activity with Epstein, did she?

5 A. No.

6 Q. And before you got to Epstein's house
7 [REDACTED] never sent you a message over the Internet about
8 sexual activity with Epstein, did she?

9 A. No.

10 Q. Did [REDACTED] ever try to convince you to
11 engage in any sexual activity with Epstein?

12 A. No.

13 Q. Did [REDACTED] every try to convince
14 you to engage in any sexual activity with Epstein?

15 A. I don't know who [REDACTED] is.

16 Q. Do you have a friend [REDACTED]?

17 A. No.

18 Q. Okay. Before you went so Epstein's house
19 did anyone call or e-mail you to induce you to engage in
20 sexual activity with Epstein?

21 A. No.

22 Q. So you're sure that before you got to
23 Epstein's house no one tried to persuade you to engage in
24 sexual activity with Jeffrey Epstein?

25 A. No.



1 Q. You're sure that -- let me ask the question
2 again.

3 You're sure that before you got to
4 Epstein's house no one tried to persuade you to engage in
5 sexual activity with Epstein for money. Are you?

6 MR. LEOPOLD: Objection. Asked and
7 answered.

8 THE WITNESS: No. And I've already
9 answered that a bazillion times.

10 BY MR. TEIN:

11 Q. He's coaching you now. So I'm going to ask
12 the question --

13 MR. LEOPOLD: Counsel, I've made an
14 objection for the record.

15 MR. TEIN: Stop speaking.

16 MR. LEOPOLD: I'm not going to stop
17 speaking. You can't interrupt me when I'm making
18 the record.

19 MR. TEIN: You're coaching the witness.

20 MR. LEOPOLD: Counsel --

21 MR. TEIN: Stop coaching the witness.

22 BY MR. TEIN:

23 Q. [REDACTED] let me ask you --

24 MR. LEOPOLD: If you continue to --

25 MR. TEIN: Stop interrupting my questions.



1 MR. LEOPOLD: If you do it one more time,
2 we're leaving.

3 BY MR. TEIN:

4 Q. 

5 MR. LEOPOLD: I'm going to make the record.
6 You cannot interrupt me when I'm making the
7 record. Out of professional conduct, you cannot
8 do that. I'm entitled to make the record. I made
9 an objection, asked and answered. Your demeanor
10 is inappropriate. You're willing and you are able
11 and you're responsible to ask a question in a
12 professional manner, and ask the question and once
13 you get the answer, to either follow up on it or
14 move on, but not continuously browbeat and ask the
15 same question over and over because you don't like
16 the answer.

17 MR. TEIN: Calm down, sir.

18 MR. LEOPOLD: Trust me, I'm very calm here.
19 When I'm not calm, you'll know it. I'm very calm.

20 So please continue on. But I will not
21 allow you to continue to harass her in the
22 demeanor that you're doing. Ask her a question
23 and move on.

24 MR. TEIN: Are you done?

25 MR. LEOPOLD: Thank you. I am.



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1 MR. TEIN: Stop misrepresenting the record
2 and calm down. I'm going to ask my question.
3 Stop it.

4 BY MR. TEIN:

5 Q. [REDACTED] --

6 MR. LEOPOLD: I think the record is very
7 clear.

8 MR. GOLDBERGER: Let me just clarify
9 something. When you object to the form of a
10 question, you're not instructing the witness not
11 to answer the question, are you?

12 MR. LEOPOLD: No. And I'm not making that
13 objection; only on attorney/client privilege.

14 MR. TEIN: Will you stop speaking now so I
15 can ask my question? Are you done?

16 Okay. I'm going to ask my question.

17 BY MR. TEIN:

18 Q. Listen, [REDACTED] --

19 MR. LEOPOLD: Hold on. Stop.

20 I've been doing this for 20 plus years and
21 have met a lot of attorneys, but I've never had an
22 experience like this where I've --

23 MR. TEIN: Stop your speeches.

24 MR. LEOPOLD: If you continue to do this,
25 whether it's with me or with my client, I will not



1 put up with it and I don't need to put up with it
2 and it's not appropriate. And I'm sure
3 Mr. Goldberger knows all this, because I know that
4 he wouldn't do this. So I will not put up with
5 it. And I think it's highly inappropriate to do
6 this with this child sitting here, the way you're
7 acting, primarily towards me, and I will not put
8 up with it.

9 MR. TEIN: Will you please stop your speech
10 so I can ask questions?

11 MR. LEOPOLD: So long as you act
12 professionally, I will do so. But if you continue
13 to do it this way, I will leave.

14 MR. TEIN: Suit yourself.

15 BY MR. TEIN:

16 Q. [REDACTED] are you sure that before you got to
17 Epstein's house no one tried to persuade you to engage in
18 sexual activity with Epstein for money?

19 MR. LEOPOLD: Asked and answered.

20 Objection.

21 MR. TEIN: Did you get her answer?

22 THE COURT REPORTER: No, I did not.

23 THE WITNESS: I'm sure.

24 BY MR. TEIN:

25 Q. Let me ask you a few questions about your



1 contact with Jeffrey Epstein. Okay?

2 A. (Witness nods head up and down.)

3 Q. Jeff never e-mailed you, did he?

4 A. No.

5 Q. Jeff never text messaged you, did he?

6 A. No.

7 Q. Jeff never chatted in a chat room with you,

8 did he?

9 A. No.

10 Q. Before you got to Epstein's house you had

11 never spoken to Jeff, had you?

12 A. No.

13 Q. And before you got to Epstein's house you

14 had never met Jeff?

15 A. Correct.

16 Q. Before you got to Epstein's house you had

17 never told Jeff that you were under 18, right?

18 A. No.

19 Q. Before you got to Epstein's house had you

20 ever told Jeffrey that you were under 18?

21 A. No. I never spoke to the man before that.

22 Q. And you only went to Jeff Epstein's house

23 that one time three years ago, correct?

24 A. Yes.

25 Q. You never went there again, correct?



1 A. No.

2 Q. All right. Let me ask you two final areas
3 of questioning about this and we'll move onto something
4 else. Okay?

5 A. Uh-huh. Yes. I'm sorry.

6 Q. Before you got to Epstein's did anyone
7 associated with Epstein ever call you on the phone and
8 try to persuade, induce, entice or coerce you to engage
9 in any sexual activity?

10 A. No.

11 Q. Before you got to Epstein's did anybody
12 associated with Epstein ever contact you on the Internet
13 and try to persuade, induce, entice or coerce you to
14 engage in any sexual activity?

15 A. No.

16 Q. [REDACTED] who told you that when you got to
17 Jeff Epstein's house you should lie to Jeff about your
18 age?

19 A. [REDACTED]

20 Q. Was it [REDACTED] or was it the other girl in
21 the car who you rode over with to Epstein's house?

22 A. [REDACTED]

23 Q. Who was the other girl in the car with you
24 that day?

25 A. I honestly don't know.



1 Q. Had you ever seen her before?

2 A. No, sir.

3 Q. You told the police that when you rode over
4 to Epstein's you had no idea who she was, right?

5 A. Correct.

6 Q. You told the police that you didn't know
7 her name, but she was like really dark, kind of like a
8 Spanish girl?

9 A. Yes.

10 Q. Those were your words, right?

11 A. Yes.

12 Q. Do you now know who she is?

13 A. No, sir.

14 Q. So it was [REDACTED] who told you to lie about
15 your age to Jeff Epstein?

16 A. Yes, sir.

17 Q. And [REDACTED] told you that if you weren't 18,
18 Epstein wouldn't let you into his house, right?

19 A. That's -- yes, yes.

20 Q. All right. Let's talk for a minute about
21 when you first met Jeff. Okay?

22 A. Sure.

23 Q. When you first met Jeff he tried to find
24 out how old you were, right?

25 A. Excuse me?



1 Q. When you first met Jeff he tried to find
2 out how old you were, right?

3 A. Not when we first introduced each other;
4 when we get upstairs, then, yes.

5 Q. During the massage Jeff asked you how old
6 you were, correct?

7 A. Yes, yes.

8 Q. Now hadn't you already told Jeff's
9 assistant, the one who walked you upstairs, that you went
10 to college and had just moved down here from Ohio?

11 A. I never spoke to the lady.

12 Q. Do you want to rethink that answer?

13 MR. LEOPOLD: Is that a question?

14 BY MR. TEIN:

15 Q. Do you want to rethink that answer?

16 A. No. I didn't really speak with her that
17 much.

18 Q. Do you want to try to refresh your memory
19 on that?

20 MR. LEOPOLD: Do you have something to
21 refresh her memory with?

22 MR. TEIN: Do you want to stop making
23 speaking objections?

24 MR. LEOPOLD: No. But to refresh someone's
25 memory, you show them a document.



1 MR. TEIN: I know how to do this.

2 MR. LEOPOLD: Then show her a document.

3 MR. TEIN: Stop speaking.

4 MR. LEOPOLD: I'm not going to stop
5 speaking. I'm going to continue to make the
6 record.

7 MR. TEIN: You're obstructing. Please
8 stop.

9 MR. LEOPOLD: I'm not obstructing. But if
10 you want to refresh her recollection, you need to
11 show her something.

12 That's not a proper question. I object to
13 the foundation and the predicate of that question.

14 MR. TEIN: Are you done?

15 MR. LEOPOLD: I am now. Thank you.

16 BY MR. TEIN:

17 Q. Do you want to try to refresh your memory
18 as to whether you had any conversation with the woman who
19 walked you upstairs in Epstein's house in which you told
20 her that you went to college and had just moved down from
21 Ohio?

22 MR. LEOPOLD: Objection. Object to the
23 form of the question. Lack of foundation and
24 predicate.

25 BY MR. TEIN:



1 Q. You can answer the question.

2 A. Sure.

3 Q. Is there anything that would refresh your
4 memory that in fact you told Mr. Epstein's assistant, the
5 one who walked you upstairs, that you went to college and
6 you had just moved down here from Ohio?

7 A. I don't remember saying that, but if you --
8 I don't remember saying that myself, so --

9 Q. That would be a lie, right?

10 A. No. I really don't remember.

11 Q. So you told Jeff that you were 18 years
12 old, correct?

13 A. Yes.

14 Q. Do you remember Detective Michelle Pagan of
15 the Police Department, Palm Beach Police Department?

16 A. Yes.

17 Q. Do you remember you spoke to her?

18 A. Yes.

19 Q. Do you remember that you told Detective
20 Pagan that when you lied about your age to Jeff you said
21 it really fast because you didn't want to make it sound
22 like you were lying?

23 A. I don't remember the words exactly, but I
24 do remember telling her I told him I was 18.

25 Q. And do you remember telling Detective Pagan



1 that when you lied to Epstein about your age that you
2 said it really fast so Epstein wouldn't realize you were
3 lying?

4 A. No, I don't remember saying those words
5 exactly to her. I remember telling her that I told
6 Epstein I was 18.

7 Q. Does it sound right to you that you told
8 Detective Pagan that you said your age really fast to
9 Epstein --

10 MS. BELOHLAVEK: Objection. Asked and
11 answered.

12 BY MR. TEIN:

13 Q. -- so he wouldn't think that you were
14 lying?

15 MR. LEOPOLD: Objection. Asked and
16 answered, lack of foundation, mischaracterization
17 of her earlier testimony. She's already answered
18 that question.

19 BY MR. TEIN:

20 Q. You can answer it.

21 MR. LEOPOLD: Same objection. It's been
22 asked and answered.

23 You can answer. I've made the objection.

24 THE WITNESS: I forget the question, now.

25



1 BY MR. TEIN:

2 Q. Let me put it again.

3 Does it sound right to you that you told
4 Detective Pagan that when you lied about your age to
5 Jeffrey Epstein, you said it really fast because you
6 didn't want to make it sound like you were lying?

7 MR. LEOPOLD: Objection. Lack of
8 foundation, asked and answered.

9 THE WITNESS: I could have possibly said
10 that, yes.

11 BY MR. TEIN:

12 Q. You didn't want Mr. Epstein to know that
13 you were lying about your age, right?

14 A. Correct.

15 Q. You didn't want Mr. Epstein to know that
16 you were not 18 yet, right?

17 A. Correct.

18 Q. You wanted Mr. Epstein to believe that you
19 really were 18, right?

20 A. Correct.

21 Q. Do you remember when Mr. Epstein asked
22 where you went to school?

23 A. Yes.

24 Q. And you told Mr. Epstein you went to
25 Wellington, right?



1 A. Yes.

2 Q. Was that the truth?

3 A. No.

4 Q. In fact, you went to Royal Palm, right?

5 A. Yes.

6 Q. So you lied to Mr. Epstein again, correct?

7 A. Yes.

8 Q. Is Wellington the college that you told
9 Jeff's assistant that you were attending?

10 A. I don't remember having that conversation
11 with her, so I wouldn't know if that's what I said.

12 Q. That was a lie, though, wasn't it?

13 MR. LEOPOLD: Objection to the form of the
14 question, lack of foundation. You're making an
15 assumption. She just answered you she can't tell
16 you that.

17 MR. TEIN: Speaking objection. And you
18 well know that, Mr. Leopold.

19 MR. LEOPOLD: She can't answer that
20 question. The way you phrased that question,
21 you're purposely making her not be honest in her
22 testimony. She can't answer a question like that.
23 She doesn't remember. So then you say, "So you
24 were lying." That's improper and you know that.
25 That's not a proper question. And any attorney



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1 that would do that to a witnesses or to a person
2 that's sitting in this chair is not acting
3 professionally. You can't ask a question like
4 that. You can do it, but it's not proper. And
5 I'm sure you weren't trained that way, certainly
6 not ethically.

7 MR. TEIN: Will you stop?

8 MR. LEOPOLD: I'm not going to stop,
9 because the way you're asking that question is
10 improper and you know it.

11 MR. TEIN: You're losing your cool.

12 BY MR. TEIN:

13 Q. Ms. [REDACTED] --

14 MR. LEOPOLD: Trust me. I'm very calm.
15 When I lose my cool, you'll know it.

16 MR. TEIN: I do know it.

17 BY MR. TEIN:

18 Q. Ms. [REDACTED] Mr. Epstein never asked you
19 to do anything other than massage him, correct?

20 A. Incorrect; because he asked me to take off
21 my bra, so that would be two things he's asked me to do.

22 Q. Other than asking you to take your bra off,
23 Mr. Epstein never asked you to do anything with him other
24 than massage, correct?

25 MR. LEOPOLD: Objection. Foundation,



1 predicate.

2 THE WITNESS: Correct.

3 BY MR. TEIN:

4 Q. You told the police, in your words, that
5 you did not whack him off, right?

6 A. Correct.

7 Q. What does that mean?

8 A. Whack, like whacking off?

9 Q. Your term, what does that mean?

10 A. Masturbating.

11 Q. Mr. Epstein never tried at any time to grab
12 your hand, did he?

13 A. No.

14 Q. Mr. Epstein never tried to put your hand
15 anywhere, did he?

16 A. No.

17 Q. At no time did you touch Mr. Epstein's
18 penis, did you?

19 A. No.

20 Q. And he did not touch you, correct?

21 A. Incorrect.

22 Q. Well, you told the police, "At no time did
23 he touch me." Were you lying to the police then?

24 A. No. Well, I wasn't being fully truthful,
25 but I wasn't lying.



1 Q. You told the police twice when you spoke to
2 Michelle Pagan that "at no time did he touch me." Didn't
3 you say that to the police?

4 A. Yeah.

5 Q. And you're saying that that was not fully
6 truthful. Is that what you're saying now?

7 A. Correct.

8 Q. And you're saying if you're not fully
9 truthful, that's not a lie. Correct?

10 A. You took that out of context like really
11 bad. I didn't mean like that. Touching my legs and --
12 he never kept his hands to himself the entire time.
13 That's what I'm trying to say.

14 Q. You told the police, "At no times did he
15 touch me." You agree with that, correct?

16 A. No, I don't agree with that, because he did
17 touch me.

18 Q. Did you tell the police that he did not
19 touch you, yes or no?

20 A. It's a possibility, but I do not remember.

21 Q. Okay. And you did not have any type of sex
22 with Jeff, correct?

23 A. No.

24 Q. And you did not have any type of oral sex
25 with Jeff, correct?



1 A. No.

2 Q. No type of intercourse with Jeff, correct?

3 A. Correct.

4 Q. All right. Let's talk about what happened
5 after the massage was over.

6 A. Okay.

7 Q. After the massage, you told Epstein that
8 you wanted to bring your twin sister back so she could
9 make some money, correct?

10 A. Incorrect.

11 Q. Your twin sister is [REDACTED] right?

12 A. Correct.

13 Q. And you love [REDACTED] very much, don't you?

14 A. Yes.

15 Q. And when you left the house you were joking
16 with the other girls, weren't you?

17 A. Incorrect.

18 Q. Well, when [REDACTED] and the other girl in the
19 car that day made their statements to the police they
20 told the police that you were joking afterwards. Are you
21 saying that they were lying to the police about that?

22 A. No. But a question or -- questions from

23 [REDACTED] -- like she asked me questions, but it wasn't
24 joking. She was kind of like in a happy way, like, "Oh,
25 what did you do? What did you do?" Like those kind of



1 things, but it wasn't joking about it at all.

2 Q. You joked about it, didn't you?

3 A. No.

4 Q. You said to [REDACTED] that if you did this
5 every weekend you'd be rich, didn't you?

6 A. No. That's what [REDACTED] told me.

7 Q. You didn't tell that to [REDACTED]

8 MR. LEOPOLD: Objection. Asked and
9 answered.

10 THE WITNESS: No.

11 BY MR. TEIN:

12 Q. After you left Epstein's house you took the
13 money and you went shopping with [REDACTED] and the other
14 girl in the car, correct?

15 A. Incorrect. I didn't spend any of the
16 money.

17 Q. You went to Marshall's, didn't you?

18 A. I went along, yes, but I didn't --

19 Q. You went shopping with them at Marshall's,
20 didn't you?

21 MR. LEOPOLD: Objection.

22 THE WITNESS: I guess you could say that.

23 MR. LEOPOLD: Objection. Lack of predicate
24 and foundation. Mischaracterization of earlier
25 testimony.



1 BY MR. TEIN:

2 Q. And [REDACTED] bought a purse, right?

3 A. Yes.

4 Q. And you were with her the whole time at
5 Marshall's, correct?

6 A. Yes.

7 Q. Now tell me about when the federal
8 prosecutors told you about getting reimbursed.

9 A. I have no idea what you're talking about.

10 Q. Tell me about when the federal prosecutors
11 spoke to you about getting money you feel you're entitled
12 to from Mr. Epstein.

13 A. I don't know what you're talking about.

14 Q. Do you know who Marie Villafona is?

15 A. No, sir.

16 Q. Did you ever meet with any federal
17 prosecutors?

18 A. I think -- yeah. I think they were -- I
19 think they were like FBI.

20 Q. Uh-huh. Did you meet with federal
21 prosecutors?

22 A. They came to my house one time, yes.

23 Q. When did they come to your house?

24 A. Very long ago.

25 Q. Was it this year, 2008?



1 A. It was not this year, no.

2 Q. Was it 2007?

3 A. I'd have to say at least two years ago or a
4 year ago, yeah. So it would be 2007, 2006; but it was a
5 while ago.

6 Q. How many federal prosecutors or FBI agents
7 came to your house?

8 A. I'm trying to remember. I want to say four
9 people came.

10 Q. Did they give you their business cards?

11 A. If they did, I don't remember, and they
12 weren't toward me. Maybe my parents have them. I don't
13 know.

14 Q. Did they give you their cell phone numbers?

15 A. No.

16 Q. Did you ever speak to them on their cell
17 phones?

18 A. No, sir.

19 Q. Did they speak to your parents?

20 A. That's something you'd have to ask my
21 parents.

22 Q. Do you know whether they spoke to your
23 parent's?

24 A. No, sir.

25 Q. You have no idea?



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1 A. No, sir.

2 MR. LEOPOLD: Objection. Asked and
3 answered.

4 BY MR. TEIN:

5 Q. So if I say the name to you Marie
6 Villafona, you don't know who that is?

7 A. No, sir.

8 Q. How many women and how many men came to
9 your house?

10 A. I want to say two ladies and two guys.

11 Q. Did someone named Jeffrey Sloman come to
12 your house?

13 A. I don't know names, sir.

14 Q. Do you know who Jeffrey Sloman is?

15 A. No, sir.

16 Q. Do you know who Jeffrey Herman is?

17 A. Yes.

18 Q. That's the lawyer who first sued Epstein on
19 your behalf, right?

20 A. Yes.

21 Q. Has Mr. Herman advanced your family any
22 money?

23 MR. LEOPOLD: Any conversations that you've
24 had with Mr. Herman regarding that issue, you are
25 not to disclose. If you've learned in some other

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1 fashion, you may answer.

2 THE WITNESS: Okay.

3 I wouldn't know.

4 BY MR. TEIN:

5 Q. You don't know?

6 A. No.

7 MR. LEOPOLD: Objection. Foundation.

8 Attorney/client privilege.

9 BY MR. TEIN:

10 Q. And you say you don't know who Jeff Sloman
11 is?

12 A. No, sir.

13 Q. Does it refresh your recollection that he's
14 the number two prosecutor at the U.S. Attorney's Office?

15 A. No.

16 Q. That he's Marie Villafona's boss?

17 A. No.

18 Q. Does it refresh your memory that he's the
19 ex-partner of Jeff Herman, the first lawyer who sued
20 you -- sued Mr. Epstein on your behalf for fifty million
21 dollars?

22 A. No, sir. I don't know who he is.

23 Q. Without telling me any conversations that
24 you've had with your lawyers, how is it that you selected
25 Mr. Herman as your lawyer from the 81,000 members of the



1 Florida Bar?

2 A. I did not select him.

3 Q. Who did?

4 A. My father.

5 Q. Did you ever meet Mr. Herman?

6 A. Once.

7 Q. Don't -- don't tell me what you discussed
8 with him. Where did you meet him?

9 A. I was shopping in my -- he showed up at my
10 friend's house.

11 Q. Whose house?

12 A. My friend [REDACTED].

13 Q. Is that [REDACTED] from the Quarterdeck
14 Tavern?

15 A. Yes.

16 Q. And did you have a meeting with him at
17 [REDACTED] house?

18 A. Yes. I guess you could say that.

19 Q. And who else was there?

20 A. My Aunt [REDACTED].

21 Q. And what was that meeting about?

22 MR. LEOPOLD: Objection. That calls for
23 attorney/client privilege.

24 BY MR. TEIN:

25 Q. What discussions did you have with



1 Mr. Herman in the presence of [REDACTED]?

2 A. None.

3 Q. What discussions did you have in the
4 presence of her aunt?

5 A. Of my aunt?

6 MR. GOLDBERGER: It's the witness's aunt.

7 BY MR. TEIN:

8 Q. Oh, of your aunt.

9 A. The only one that we've ever discussed or
10 ever had.

11 Q. And so you were in a conversation with
12 Mr. Herman and your aunt?

13 A. Yes, sir.

14 Q. And you discussed privileged matters during
15 that conversation?

16 MR. LEOPOLD: Object to the form. I think
17 you might have to educate her on that question.

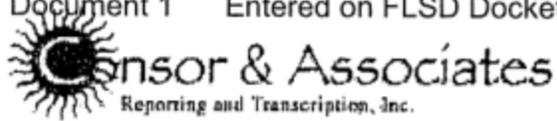
18 BY MR. TEIN:

19 Q. You discussed the lawsuit?

20 A. Yes.

21 Q. Did [REDACTED] tell you about any
22 conversations that she had with Mr. Herman?

23 A. As far as I'm concerned, she's never spoken
24 or she's never had a conversation. She only opened the
25 door and then left. She's the one who answered the door.



1 Q. Why did the meeting take place at [REDACTED]
2 [REDACTED] house?

3 A. I spent the night that night at her house.

4 Q. And when was this?

5 A. A while ago.

6 Q. How long ago?

7 A. A month and a half ago. I'm guessing.

8 Q. A month and a half ago?

9 A. Uh-huh.

10 Q. So was it before of after Mr. Herman filed
11 the fifty-million-dollar lawsuit against Epstein?

12 A. After.

13 Q. Did you meet with an FBI agent named
14 Nesbitt Kurkendall, a woman?

15 A. I don't know.

16 Q. Did Ms. Kurkendall speak to you about
17 getting reimbursed from Mr. Epstein?

18 A. I've never had a discussion with anyone
19 about getting reimbursed from Mr. Epstein.

20 Q. Have you met with an agent named Jason
21 Richards?

22 A. Not to my knowledge.

23 Q. How about an agent named Tim Slater?

24 A. No, sir.

25 Q. How about an agent named Junior Ortiz?



1 A. No.

2 Q. And we've learned that many of the girls,
3 some of whom are as old as 23, were told by the
4 government that they would get money at the end of the
5 criminal prosecution. Does that sound familiar to you?

6 A. No, sir.

7 Q. Other than Mr. Leopold here -- I'm not
8 asking about Mr. Herman either --

9 A. Uh-huh.

10 Q. -- did anyone ever discuss with you that
11 you could get reimbursement for your damages?

12 A. No, sir.

13 Q. Did you or any member --

14 MR. LEOPOLD: Are you referring to a
15 criminal matter or a civil matter?

16 BY MR. TEIN:

17 Q. Did you or any member --

18 MR. LEOPOLD: Excuse me. Let me object to
19 the form of the question.

20 BY MR. TEIN:

21 Q. Did you or any member of your family ever
22 get a victim notification letter from anyone?

23 A. I no longer live at that residence and I
24 wouldn't know.

25 Q. So your testimony is that you have never



1 received a victim notification letter, correct?

2 rect.

3 Q. And your testimony is that you don't know
4 if your parents have ever received a victim notification
5 letter, correct?

6 A. Correct.

7 Q. Have you given any evidence to prosecutors
8 or law enforcement in this case?

9 A. What do you mean by evidence?

10 Q. Well. Anything that you can touch or feel.

11 A. No.

12 MR. LEOPOLD: Objection to the form of the
13 question.

14 BY MR. TEIN:

15 Q. So you haven't given anything physical --

16 A. No.

17 Q. -- any item to any prosecutor, police
18 officer or law enforcement agent, correct?

19 A. My cell phone four years ago or three years
20 ago, but that's it.

21 Q. You gave your cell phone to whom?

22 A. Michelle Pagan.

23 Q. Did she keep it?

24 A. Ask her.

25 Q. You gave it to her and then you didn't get



1 it back at the end of the meeting?

2 A. No. They -- yeah. No. They have it. I'm
3 guessing. I don't have it.

4 Q. How much money are you hoping to get out of
5 Mr. Epstein?

6 MR. LEOPOLD: Objection to the form of the
7 question. Attorney/client privilege.

8 BY MR. TEIN:

9 Q. How much money are you hoping to get, you,
10 yourself, hoping to get out of Epstein?

11 MR. LEOPOLD: Same. Same objection,
12 attorney/client privilege.

13 Don't answer the question.

14 BY MR. TEIN:

15 Q. I'm not asking about what your lawyer told
16 you.

17 MR. LEOPOLD: I'm instructing her not to
18 answer the question, because any of those
19 conversations involve her counsel.

20 MR. TEIN: Certify that.

21 MR. LEOPOLD: Please.

22CERTIFIED QUESTION.....

23 BY MR. TEIN:

24 Q. Now, [REDACTED] you lied to get out of this
25 deposition, didn't you?



1 A. No, sir.

2 Q. You didn't want to come to court today and
3 tell the story that you had told to the police under
4 oath, did you?

5 MR. LEOPOLD: Object to the form of the
6 question. Lack of foundation, predicate.

7 THE WITNESS: No. I have no problem coming
8 here and talking to you.

9 BY MR. TEIN:

10 Q. And to avoid getting served with a lawful
11 subpoena, you lied about your name, didn't you?

12 A. No.

13 Q. And in fact, just lying yourself wasn't
14 enough, was it?

15 MR. LEOPOLD: Objection to the form of the
16 question.

17 Don't answer it. It's not a question.

18 Object to the form of the question. Lack
19 of foundation.

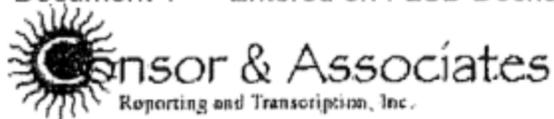
20 MR. TEIN: Are you instructing her not to
21 answer?

22 MR. LEOPOLD: I am.

23 MR. TEIN: Certify it.

24 MR. LEOPOLD: Please.

25



1CERTIFIED QUESTION.....

2 BY MR. TEIN:

3 Q. You asked your co-workers --

4 MR. LEOPOLD: It's vague and ambiguous.

5 BY MR. TEIN:

6 Q. You asked your co-workers at the
7 Quarterdeck Tavern to lie for you, didn't you?

8 A. No. I informed my boss about what was
9 going on and he told me that he would help in any way
10 that he can.

11 Q. Okay. You got your friend [REDACTED] to lie
12 by switching name tags with you, correct?

13 A. Incorrect. It was a coincidence that same
14 night she was not wearing her name tag; she was wearing
15 mine. But I was also not wearing -- I was wearing my
16 name tag. Everyone switches name tags. It just so
17 happens it was a coincidence that same night the people
18 came with the papers.

19 MR. TEIN: Will you put up Exhibit 18-001?

20 MR. GOLDBERGER: And mark 18-001 for
21 identification purposes to this deposition.

22 MR. LEOPOLD: None of them have been marked
23 yet. Can we mark them and put them as attachment
24 to the depositions? Because I think you've shown
25 three photos now. And this is the only one that



1 has been marked for identification yet.

2 BY MR. TEIN:

3 Q. [REDACTED] --

4 MR. LEOPOLD: Hold on just a second. Just
5 so the record is clear --

6 MR. TEIN: I'm not speaking to you.

7 MR. LEOPOLD: Okay. Then don't speak to me
8 then. But I'll speak to Mr. Goldberger, perhaps.

9 But at least for the record, can we put on
10 the record what the previous two photographs were
11 marked for identification?

12 MR. GOLDBERGER: We will make sure that the
13 record is clear at the end of the deposition so
14 that there's no ambiguity.

15 MR. LEOPOLD: Thank you.

16 BY MR. TEIN:

17 Q. [REDACTED] I've put a photograph marked 18-001
18 up on the screen. Do you see that?

19 A. Yup.

20 Q. Who is that in the photo?

21 A. [REDACTED] on the left and me on the right.

22 Q. [REDACTED] right?

23 A. Yes.

24 Q. [REDACTED] your friend at the
25 Quarterdeck Tavern, right?



1 A. Yes.

2 Q. [REDACTED] your friend, who you say the day
3 that the process servers went to serve you with a
4 subpoena for this deposition, just happened -- just by
5 coincidence, was wearing your name tag?

6 A. Yes, sir.

7 Q. And just by coincidence, you were wearing
8 her name tag, correct?

9 A. Yes.

10 Q. Your testimony under oath is that's just a
11 coincidence, right?

12 A. Total honesty.

13 Q. It just happens to be the day that you were
14 going to be served with a subpoena, correct?

15 A. That wasn't the first day that --

16 MR. LEOPOLD: [REDACTED] just answer the
17 question. It calls for a yes or no.

18 THE WITNESS: Yes.

19 BY MR. TEIN:

20 Q. You said that wasn't the first day you were
21 going to be -- you thought you were being served with a
22 subpoena, correct?

23 A. Correct.

24 Q. You knew before the day that you switched
25 name tags with [REDACTED] that the process servers were



1 looking for you, didn't you?

2 A. No. I knew --

3 MR. LEOPOLD: Just answer it. It calls for
4 a yes or no.

5 THE WITNESS: Okay. No.

6 BY MR. TEIN:

7 Q. Now you can explain the answer that your
8 counsel stopped you from explaining.

9 A. Okay. I work at Quarterdeck and people
10 were telling me that people were looking for me. So yes,
11 I was aware that people were searching for me. But I had
12 no idea who they were or what their intentions were. But
13 I thought they were just people I didn't want to talk to.
14 So I just didn't want to talk to them. And every time
15 they'd come to work I wasn't there. And so happens the
16 night that they came in me and my friend switched name
17 tags. No big deal.

18 Q. That's a lie, isn't it?

19 MR. LEOPOLD: Objection. Don't answer that
20 question. That's harassment and I will not allow
21 it. He could ask the questions and we'll allow a
22 jury to make that determination, but not counsel.

23 I will not allow her to answer that
24 question.

25 MR. TEIN: Certify it.



1 MR. LEOPOLD: I'll certify it.

2CERTIFIED QUESTION.....

3 She's answered that question. She's explained it five
4 times already. The fact that Counsel doesn't like the
5 answer, that's a different query.

6 MR. TEIN: Stop making speaking objections.

7 MR. LEOPOLD: I'm not. I'm not going to
8 put up with it, because it's in appropriate, Jack,
9 and you know it. I will not allow Counsel to
10 berate a witness, whether it's in a criminal case
11 or a civil case, whether my client or --

12 MR. TEIN: Calm down.

13 MR. LEOPOLD: Excuse me.

14 No, I'm not going to allow it. That is not
15 proper.

16 MR. GOLDBERGER: Okay.

17 MR. LEOPOLD: If he wants to say that she's
18 lying after asking it five times and her
19 explaining in great detail, he can do that. But
20 I'm not going to allow her to answer, nor be
21 harassed by him. It's improper.

22 MR. GOLDBERGER: Okay. But your response
23 that Counsel doesn't like the question -- or
24 doesn't like the answer -- just let me finish.

25 MR. LEOPOLD: Absolutely. I wasn't going



1 to interrupt you.

2 MR. GOLDBERGER: Just requires us to say we
3 like the answer to that question. And it's not
4 you and I or you and Mr. Tein who are testifying
5 here. It's the witness.

6 MR. LEOPOLD: Fine. But after the sixth
7 time of asking the same question and then coming
8 back and pointing a finger at her and saying,
9 "You're a liar" --

10 MR. TEIN: That didn't happen.

11 MR. LEOPOLD: That's fine. But I'm not
12 going to allow her to answer that question,
13 because she's answered that same question and has
14 explained it.

15 Now Counsel might be sitting there rubbing
16 his head with a migraine. That's his problem.
17 But if he can't ask a question appropriately in a
18 professional manner, we will leave. I will not
19 allow her to be berated like that.

20 MR. GOLDBERGER: Actually, we're very happy
21 with the answer.

22 MR. LEOPOLD: That's great.

23 MR. GOLDBERGER: Do you want us to get into
24 that?

25 MR. TEIN: Ted --



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1 MR. LEOPOLD: This is really big stuff that
2 you're going through. But that's fine; just ask
3 your question and move on. But do it one time.
4 If you don't understand it, I'll let you follow
5 up, but I'm not going to allow you to ask the same
6 question time and again and then call her a liar.
7 Just ask the question, get the answer and move to
8 the next subject matter.

9 MR. TEIN: Ted, I'm sitting right across
10 the table from you.

11 MR. LEOPOLD: Yes, sir.

12 MR. TEIN: Please be quiet. Don't yell.

13 MR. LEOPOLD: I will not be quiet.

14 MR. TEIN: Stop yelling.

15 MR. LEOPOLD: Lewis, when I'm yelling
16 you'll know it. I will not --

17 MR. TEIN: My name is not Lewis.

18 MR. LEOPOLD: I thought your first name was
19 Lewis, Mr. Tein.

20 MR. TEIN: You watched me for three days at
21 the evidentiary hearing where you sat in the back
22 of the courtroom. You should know who I am.

23 MR. LEOPOLD: Well, that's the impression
24 you must have made in the courtroom.

25 I will not be quiet.

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1 MR. TEIN: That's obnoxious. Stop being
2 obnoxious. It's stupid. Let's go ahead with the
3 questions.

4 MR. LEOPOLD: I will make the record.

5 MR. TEIN: Let's get on with the questions.

6 MR. LEOPOLD: Do you need a break?

7 (Thereupon, a recess was taken.)

8 BY MR. TEIN:

9 Q. Okay. [REDACTED] after you told your manager
10 at the Quarterdeck Tavern everything that was going on
11 and he told you he would help you any way he could, he
12 hid you in the kitchen from the process servers, correct?

13 A. Incorrect.

14 Q. Isn't it true that lying to avoid service
15 is a meaningless lie to you, [REDACTED]

16 A. Incorrect.

17 Q. What is your manager's name?

18 A. I have three. Would you like to know

19 all --

20 Q. Who's the one who lied for you?

21 A. [REDACTED]

22 Q. And what did [REDACTED] do to lie for you?

23 A. Said I wasn't there.

24 Q. And who did he tell wasn't there?

25 A. Ask him.



1 Q. Where were you when [REDACTED] told this
2 someone that you were not at the Quarterdeck Tavern?

3 A. Eating nachos.

4 Q. At the Quarterdeck Tavern?

5 A. Yes.

6 Q. What did you do so that [REDACTED] would lie to
7 the process servers for you?

8 A. Nothing.

9 Q. You just got him to lie for you, didn't
10 you?

11 A. No. I had no influence on him saying I
12 wasn't there.

13 Q. He took that upon himself?

14 Isn't it true that Mr. Epstein's process
15 servers had to ask the police to get you out of the
16 restaurant so that they could serve you?

17 MR. LEOPOLD: Objection. Lack of
18 foundation, predicate.

19 BY MR. TEIN:

20 Q. You can answer the question.

21 MR. LEOPOLD: If you know. Don't guess.

22 THE WITNESS: No. Can you repeat the
23 question?

24 MR. TEIN: Don't coach.

25 MR. LEOPOLD: Don't guess.



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1 MR. TEIN: That's a coaching.

2 MR. LEOPOLD: No. That's an instruction to
3 the client.

4 MR. TEIN: No. You don't do that.

5 THE WITNESS: Can you repeat the question?

6 MR. LEOPOLD: Let me just state for the
7 record --

8 BY MR. TEIN:

9 Q. Once the police -- isn't it true that
10 Mr. Epstein's process servers had to ask the police to
11 get you out of the restaurant so that they could serve
12 you?

13 A. Incorrect. My boss called the police.

14 Q. And once the police showed up, to stop you
15 from lying to avoid service, you made up another lie that
16 the process servers had harassed you. Isn't that
17 correct?

18 A. Incorrect.

19 Q. You lie all the time, don't you?

20 MR. LEOPOLD: Objection.

21 THE WITNESS: Incorrect.

22 BY MR. TEIN:

23 Q. You have a MySpace page, don't you?

24 A. No longer do I have a MySpace page. I
25 deleted it.



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1 Q. When did you delete your MySpace page?

2 A. A couple days ago.

3 Q. Who told you to take your MySpace page down
4 a couple of days ago?

5 A. Nobody. I'm sick and tired of MySpace.

6 Q. You all of a sudden got sick and tired of
7 MySpace and just a few days before this deposition you
8 decided to delete your MySpace page, correct?

9 A. Correct.

10 Q. Is that your testimony under oath?

11 A. Yes.

12 Q. Did you take your MySpace page down because
13 you thought the government might subpoena it?

14 A. Incorrect.

15 Q. Hadn't your MySpace page been up for over
16 three months before you took it down?

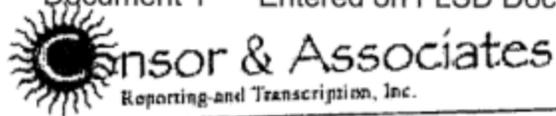
17 A. Correct. But I also had made tons of
18 MySpaces over the last years. I just get tired of them
19 and delete them because -- drama -- and make new ones.

20 Q. We're going to talk about that.

21 So you deleted your MySpace page after you
22 were already under subpoena for this deposition, correct?

23 A. Correct.

24 Q. What about the MySpace page didn't you want
25 us to see, 



1 A. Nothing.

2 Q. Well, we're going to come back to MySpace
3 in a second.

4 A. You do that.

5 Q. [REDACTED] I'm going to ask you some questions
6 about why you lie about your age so often, okay?

7 MR. LEOPOLD: Objection to the form.

8 Argumentative.

9 BY MR. TEIN:

10 Q. You lie about your age all the time, don't
11 you?

12 MR. LEOPOLD: Objection, argumentative.

13 THE WITNESS: Incorrect.

14 BY MR. TEIN:

15 Q. You lie about your age to get body
16 piercings, don't you?

17 A. Incorrect.

18 Q. You have body piercings, don't you?

19 A. Yes.

20 Q. You have four body piercings; isn't that
21 right?

22 A. Five.

23 Q. Other than the piercings on your ears --
24 I'm not talking about that --

25 A. Oh, then no; just one.



1 Q. And where is the one body piercing?

2 A. Belly.

3 Q. When did you get that?

4 A. For my birthday, with my stepmother and my
5 father.

6 Q. And when was that?

7 A. When I was 14.

8 Q. Okay. So you had that body piercing when
9 you met Epstein, correct?

10 A. It might have been, or maybe that -- yeah,
11 either my 14th birthday or my 15th. I honestly don't
12 remember.

13 Q. Now you've lied about your age to get into
14 bars by using driver's licenses that aren't yours,
15 correct?

16 A. Incorrect.

17 Q. Are you swearing under oath that you've
18 never done that?

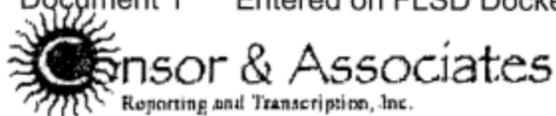
19 A. Yes, I swear under oath.

20 Q. And you've lied about your age to buy beer,
21 correct?

22 A. Incorrect.

23 Q. You're swearing under oath that you've
24 never lied to stores about your age?

25 A. I've never lied to a store about my age or



1 anything.

2 Q. You try to look much older than you are,
3 don't you?

4 A. Incorrect.

5 Q. And you've lied about your age on your
6 MySpace pages, don't you?

7 A. Incorrect.

8 Q. All right. Let's look at Exhibit 26-01
9 one.

10 MS. BELOHLAVEK: 26-001?

11 MR. TEIN: Yes.

12 BY MR. TEIN:

13 Q. On this page you lied to everyone that you
14 were 18, didn't you?

15 A. Correct.

16 Q. Let's go to Exhibit 33.

17 MS. BELOHLAVEK: That's 33-001?

18 TEIN: Correct.

19 BY MR. TEIN:

20 Q. On this page you lied to everyone that you
21 were 19, didn't you?

22 A. Incorrect.

23 MR. LEOPOLD: Just answer the question.

24 THE WITNESS: Oh, incorrect.

25 BY MR. TEIN:



1 Q. Now you can explain your answer.

2 A. I know that I have seen all of these and I
3 know that this one is mine.

4 Can you go down?

5 MR. LEOPOLD: Just for the record, you're
6 pointing to the photo.

7 THE WITNESS: I'm pointing to --

8 BY MR. TEIN:

9 Q. You're pointing to the one where it says
10 your age is 18?

11 A. Correct.

12 Q. That's yours, right?

13 A. Correct. That's mine from a couple years
14 ago that I have not been on, because I don't use that.
15 Please keep going down, please. And I think that's it,
16 because there's no one -- just that one is mine.

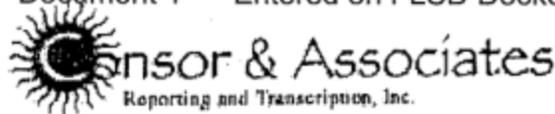
17 Q. So the one you pointed to where it says
18 your age is 18, that's yours, correct?

19 A. Correct.

20 Q. And when you wrote 18 as your age on your
21 MySpace page, that was a lie, wasn't it?

22 A. Correct.

23 Q. Did you lie about your MySpace page back
24 then because you couldn't post on MySpace unless you were
25 18?



1 A. Correct. There was a rule many years ago
2 that you had to be 18 to have a MySpace.

3 Q. So you lied about your age so you could
4 post on MySpace, right?

5 A. Yes.

6 Q. Let's go back to the top one on this page,
7 33-01.

8 Are you testifying now under oath that this
9 MySpace page where the headline says, "Twins do have more
10 fun," and the location is given as Lox, abbreviation for
11 Loxahatchee, and the age is 19, and it says [REDACTED]

12 [REDACTED] is it your testimony that you did not post
13 that?

14 A. Correct.

15 Q. Now let's go back to the one that you were
16 pointing to before on this page, where it says your age
17 is 18 and you lied about your age to post MySpace, okay?

18 A. Uh-huh, yes.

19 Q. All right. Why did you finally put your
20 true age on your MySpace profile four days before you
21 were scheduled to testify before the Grand Jury?

22 A. I don't know what you're talking about.

23 MR. LEOPOLD: If you don't understand, ask
24 him to ask the question again.

25 MR. TEIN: Don't coach.



1 THE WITNESS: I don't know which MySpace
2 you're talking about.

3 BY MR. TEIN:

4 Q. The MySpace page that you're just pointing
5 to, where it says you were 18.

6 A. Yes.

7 Q. And you were lying about your age, right?

8 A. Uh-huh.

9 Q. Why did you finally post your true age on
10 your MySpace profile --

11 A. Uh --

12 Q. -- four days before you were scheduled to
13 testify before the Grand Jury?

14 A. I honestly don't know which MySpace,
15 because I've had like a bazillion MySpaces, and in that
16 year, I had two, that one and another one, and that one's
17 been deleted. So I don't know which one you're referring
18 to.

19 Q. You remember that you changed your age on
20 your MySpace page from 18 to your true age just four days
21 before you went and testified in the Grand Jury?

22 A. No.

23 Q. You don't remember that.

24 A. No.

25 Q. Do you remember Detective Recarey? Did you



1 ever meet a Detective Recarey?

2 A. I don't know the names.

3 Q. How many different detectives have you met
4 with on this case from Palm Beach?

5 A. Probably a good six or seven, maybe.

6 Q. Did one of the detectives tell you before
7 you testified in the Grand Jury that you should take your
8 MySpace age and put your true age?

9 A. No.

10 Q. Didn't Detective Recarey have to come to
11 your house to pick you up to get you to testify in front
12 of the Grand Jury?

13 A. Possibly; maybe because I didn't have a
14 rice; I was only 14 or 15 at the time.

15 Q. Your mom didn't drive you?

16 A. No.

17 Q. Stepmom didn't drive you?

18 A. I think my dad. Oh, my dad; my dad drove
19 me.

20 Q. Your dad drove you?

21 A. Yes, sir.

22 Q. So your testimony is Detective Recarey did
23 not drive you, correct?

24 MR. LEOPOLD: Objection. /asked and
25 answered.



1 THE WITNESS: No. I'm pretty sure my dad
2 drove me, because he was there with me.
3 BY MR. TEIN:
4 Q. Did any detective tell you to change your
5 age on your MySpace page, to put your true age?
6 A. No, sir.
7 Q. Now you also lied on your MySpace page
8 about your income, didn't you?
9 A. Yes.
10 Q. And you lied, saying that you made a
11 quarter million dollars a year and higher, correct?
12 A. As a joke, yes.
13 Q. That was a lie, wasn't it?
14 A. Yes.
15 Q. And you also lied on your MySpace page,
16 saying that you were married, didn't you?
17 A. Possibly. And that might have been an
18 error on my part.
19 Q. Now you also lie to the police, don't you?
20 A. No.
21 Q. Well, you lied to the police in your
22 tape-recorded statement that you gave to Detective
23 Michelle Pagan three years ago, didn't you?
24 A. To my knowledge, no, I did not.
25 Q. Well, you lied to the police when you



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1 accused Mr. Epstein of attempting to murder your father,
2 didn't you?

3 A. No. I never heard a statement saying that
4 Mr. Epstein tried to murder my father.

5 Q. You made that statement, didn't you?

6 MR. LEOPOLD: Do you have a statement to
7 show her? That's been asked and answered.

8 MR. TEIN: I'm sorry. I didn't hear the
9 witness' answer, Mr. Leopold.

10 BY MR. TEIN:

11 Q. [REDACTED] you told the police, didn't you,
12 that Mr. Epstein almost killed your father, didn't you?

13 A. No.

14 Q. Three years ago, before Mr. Epstein even
15 knew about this investigation, you told the police that
16 Epstein had "already come to my dad's house and did
17 something to my dad's tires and my dad almost died. I
18 didn't want my dad to get hurt, because Jeff already
19 almost killed him."

20 Didn't you say that?

21 A. Not to my knowledge or recollection. I
22 have never said anything like that.

23 Q. That would have been a complete lie,
24 wouldn't it have been?

25 A. Yeah.

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