EPSTEIN - ATTY'S FEES CORR.

Roy Black ltr dated
2/9/09

Lefkowitz ltr dated
2/13/09

Anything btwn
3/3 and 6/8

file
Epstein

# KIRKLAND & ELLIS LLP

AND AFFILIATED PARTNERSHIPS


Citigroup Center
153 East 53rd Street
New York, New York 10022-4611

[redacted]

www.kirkland.com

Jay P. Lefkowitz, [redacted]
To Call Writer Directly:
[redacted]
lefkowitz@kirkland.com

Facsimile:
[redacted]


September 2, 2008

VIA FACSIMILE (561) 820-8777

[redacted]
United States Attorney's Office
Southern District of Florida
500 South Australian Avenue, Suite 400
West Palm Beach, Florida 33401

*Re: Jeffrey Epstein*

Dear [redacted]:

In response to your letter dated August 26, 2008, I am confirming that Mr. Goldberger should continue to be listed as the contact person in the amended victim notification letters and should receive the carbon copies of those letters as they are sent.

Also, we plan on speaking to Mr. Josefsberg this week to discuss a procedure for paying his fees. We intend to comply fully with the agreement and Mr. Epstein will pay Mr. Josfsberg's usual and customary hourly rates for his work pursuant to the agreement facilitating settlements under 2255.

Sincerely,

Jay P. Lefkowitz

cc: [redacted], Chief, Northern Division
Jack Goldberger
Roy Black

**ROBERT [redacted]. JOSEFSBERG**

**From:** ROBERT [redacted]. JOSEFSBERG
**Sent:** Tuesday, February 03, 2009 2:16 PM
**To:** [redacted]
**Subject:** Re: Epstein

Roy - I need to go on record regarding Mr Epsteins message that without any settlements there will be a "push back" on any future payments. First, Mr Epstein has no authority to "push back" on payments. Secondly, although I am vey interested in settling some cases, I will not let Mr Epstein coerce me into settling for some clients so that I can get paid for representing others. It would be unethical for me to settle any cases in order to avoid Mr Epstins threatened "push back". If I do settle any cases, it will have nothing to do with Mr epstein waving the money carrot in front of me. Third, on friday, Jan 23rd,(or Sat the 24th) you advised that Mr Epstein would promptly pay all costs and all legal fees through and including 1/23. I told you that I questioned his authity to "stop" paying for time and costs incurred after 1/23. BUT - I appreciated the fact that he would promptly pay our next bill - covering only through 1/23. I told you that I would not send out this new bill untill Mr epstein paid our prior, 120 and 90 day overdue statements. I didn't want a "new" statement to delay payment on the old overdue statments. Does your last email mean that Mr epstein is breaching his agreement to promptly pay for all time/costs incurred up to 1/23 ? I will send a new statement covering everything from approx 12/15 through 1/23. Please let me know whether Mr Epstein will comply with your message of 1/23, or he will "push back" on this next statement. My next statement will be sent the day after Mr Epstein pays the other old staements. If he did actually send the check today, I should have the next statment mailed by thurs or fri. Thus far Mr Epstein has made 3 changes re where I should send the statements. In order to avoid further delay and confusion, please let me know where you want me to send the next statements. I apologize if this email has typos!, etc but its the best I can do while I'm in trial. I do not apologize for the tone of this note - I am hurt and upset - I think that Mr Epstein is taking advantage of me, and taking advantage of our (Roy/Bob) relationship. Will further discuss this w you by phone or in personm. Thanks

----- Original Message -----
From: Roy BLACK <[redacted]>
To: ROBERT [redacted]. JOSEFSBERG
Sent: Tue Feb 03 12:47:59 2009
Subject: Epstein

Bob: I am told a check went out today. I am also told there will be push back on further expenses without a settlement. So we need to discuss settling the cases. Jeffrey will not pay more for the fees and expenses without the start of settlement negotiations. So let's discuss. Roy

## BERT PATTON

**From:** ROBERT [redacted]. JOSEFSBERG
**Sent:** Wednesday, February 11, 2009 12:47 PM
**To:** 'Amy Ederl'; 'Evelyn Sheehan'; KATHERINE W. EZELL; BERT PATTON
**Subject:** FW: Epstein

-----Original Message-----
From: Roy BLACK [mailto:[redacted]]
Sent: Monday, February 09, 2009 8:53 AM
To: ROBERT [redacted]. JOSEFSBERG
Subject: Re: Epstein

The client has informed me and I will send you a note today on his position. Sorry for the delay.

>>> "ROBERT [redacted]. JOSEFSBERG" <RJOSEFSBERG@PODHURST.com> 2/6/2009 2:39 PM
>>> >>>
Having not heard from you, I assume that you still do not have sufficient direction, or are still lacking client input. I've had 3 or 4 issues pending since our conversation of 1/23 or 1/24. I've waited two weeks for your responses, and + am running out of time. I understand and sympathize with your situation. I wish someone would attempt to understand my situation. You are leaving me very limited alternatives.

----- Original Message -----
From: Roy BLACK <[redacted]>
To: ROBERT [redacted]. JOSEFSBERG
Sent: Thu Feb 05 12:04:21 2009
Subject: Re: Epstein

I am talking to the client this afternoon. So I have no direction yet.

>>> "ROBERT [redacted]. JOSEFSBERG" <[redacted]> 2/5/2009 11:17 AM
>>> >>>
Roy - you wrote on 2/3 that you were advised that "a check went out today". It did not. This morning 100,000 was wired. There was 200,000 that was more than 90 days overdue. The 50 percent payment is not acceptable. Unfortunately, this matter is going to blow up. My partner, Podhurst wants to bring this to a head by tomorrow. I will try to reach you during the lunch break in my arbitration. You were supposed to get back to me on yesterday - after you received "client input". I understand your situation - but it is apparent that your client does not care about his agreements, and is. Making everything impossible. I though it was appropriate to let you know before we take further action.

----- Original Message -----
From: Roy BLACK [redacted]>
To: ROBERT [redacted]. JOSEFSBERG
Sent: Tue Feb 03 13:41:21 2009
Subject: Re: Epstein

no problem. I will keep you informed.

>>> "ROBERT [redacted]. JOSEFSBERG" <[redacted]> 2/3/2009 1:33 PM
>>> >>>
I'll be at my arbitration from approx 9 till 6. I'll try to call you during a break - or you can call me after 6. Why don't you email me after you get your client input - and I'll call you after that.

----- Original Message -----
From: Roy BLACK <[redacted]>
To: ROBERT [redacted]. JOSEFSBERG
Sent: Tue Feb 03 13:19:40 2009
Subject: Re: Epstein

Bob let's talk tomorrow. I need more input from the client before we discuss this.

>>> "ROBERT [redacted]. JOSEFSBERG" <[redacted]> 2/3/2009 1:11 PM
>>> >>>
Roy - I'm not satisfied with my last email to you - am in a rush because I'm in an 8 day arbitration. I need to talk to you - will you (at the milt hirsch function tonight? I'll try to get there btwn 6:45 and 7:30 - if we don't talk there, please call me after 7:30 - at 632 9230

----- Original Message -----
From: ROBERT [redacted]. JOSEFSBERG
To: 'RBLACK@royblack.com' <[redacted]>
Sent: Tue Feb 03 12:55:53 2009
Subject: Re: Epstein

Fine - can we settle [redacted]? - as to the "delay" in talking about settlement , when I met with Jay L in early Dec he said that Jeff would not be ready to talk about settling till the end of Jan. Both you and Jay did not return my 3 or 4 calls to each of you between Jan 10 and approx Jan 25 when I finally dpoke to you.

----- Original Message -----
From: Roy BLACK <[redacted]>
To: ROBERT [redacted]. JOSEFSBERG
Sent: Tue Feb 03 12:47:59 2009
Subject: Epstein

Bob: I am told a check went out today. I am also told there will be push back on further expenses without a settlement. So we need to discuss settling the cases. Jeffrey will not pay more for the fees and expenses without the start of settlement negotiations. So let's discuss. Roy

# KIRKLAND & ELLIS LLP

AND AFFILIATED PARTNERSHIPS

Citigroup Center
153 East 53rd Street
New York, New York 10022-4611
[redacted]
www.kirkland.com

Jay P. Lefkowitz, [redacted]
To Call Writer Directly:
[redacted]
lefkowitz@kirkland.com

Facsimile:
[redacted]

**Confidential**
**For Settlement Purposes Only**
**Pursuant to Rule 408**

February 13, 2009

**VIA FACSIMILE**
Robert [redacted]. Josefsberg, Esq.
Podhurst Orseck, P.A.
City National Bank Building
25 West Flagler Street, Suite 800
Miami, FL 33130

Dear Bob,

We have received copies of your firm's invoices for the last several months as related your representation of a select group of individuals in connection with a matter between Mr. Epstein and the United States Attorney's Office in the Southern District of Florida (the "USAO"). We write this letter to (1) address issues raised by those invoices and (2) suggest a resolution to this matter that would benefit all parties involved.

First and foremost, after thoroughly reviewing the invoices from your firm, it is clear that the services you have provided to the women at issue far exceed the scope of services for which Mr. Epstein agreed to pay under the federal Deferred Prosecution Agreement (the "Agreement") and Addendum. Pursuant to the relevant Agreement and Addendum, Mr. Epstein agreed to pay the attorney representative for his representation of a select group of individuals at "his or her regular customary hourly rate." Importantly, the Addendum limits the scope of this representation and specifies that the Agreement "shall not obligate Epstein to pay the fees and costs of contested litigation filed against him." The Addendum further provides that Mr. Epstein's obligation to pay the fees of an attorney representative ceases when the work performed is aimed at pursuing "a contested lawsuit pursuant to 18 [redacted]. § 2255" or "any other contested remedy." Simply put, the Agreement and Addendum only require Mr. Epstein to pay fees expended in connection with negotiating a settlement for each of the relevant individuals, not for services relating to any type of pre-litigation effort. Thus, any charges related to work performed beyond, or extraneous to, reaching a settlement should not be Mr. Epstein's responsibility. Mr. Epstein fully intends to fulfill his agreement and pay for all fees associated with settlement at your firm's regular hourly rates. However, Mr. Epstein will not pay for any services beyond those directed towards reaching a settlement. To resolve this matter, we are

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available and ready to discuss the invoices with you on a line-by-line basis and believe that we can come to an agreeable resolution as to the fees accumulated to date. During the same discussion, we hope to clarify with you the exact number of women who have agreed to utilize your services for the purpose of reaching a settlement with Mr. Epstein.

Second, upon serious consideration and discussion, Mr. Epstein is prepared to offer your clients a settlement that we believe will serve to compensate each individual appropriately. As a final resolution to this matter, Mr. Epstein would pay each individual who agrees to relinquish any and all potential civil claims against him $50,000.00, which is the statutory amount provided by 18 [redacted] § 2255, at the time of the alleged violations. Each individual would receive this amount, without any need to offer proof of claim or injury and without any further delay. We hope that you discuss this offer with your clients in the next 30 days, as Mr. Epstein's offer to settle will remain open until March 13, 2009.

Very truly yours,

Jay P. Lefkowitz

**ROBERT [redacted]. JOSEFSBERG**

**From:** ROBERT [redacted]. JOSEFSBERG
**Sent:** Tuesday, February 03, 2009 2:16 PM
**To:** [redacted]m'
**Subject:** Re: Epstein

Roy - I need to go on record regarding Mr Epsteins message that without any settlements there will be a "push back" on any future payments. First, Mr Epstein has no authority to "push back" on payments. Secondly, although I am vey interested in settling some cases, I will not let Mr Epstein coerce me into settling for some clients so that I can get paid for representing others. It would be unethical for me to settle any cases in order to avoid Mr Epstins threatened "push back". If I do settle any cases, it will have nothing to do with Mr epstein waving the money carrot in front of me. Third, on friday, Jan 23rd,(or Sat the 24th) you advised that Mr Epstein would promptly pay all costs and all legal fees through and including 1/23. I told you that I questioned his authity to "stop" paying for time and costs incurred after 1/23. BUT - I appreciated the fact that he would promptly pay our next bill - covering only through 1/23. I told you that I would not send out this new bill untill Mr epstein paid our prior, 120 and 90 day overdue statements. I didn't want a "new" statement to delay payment on the old overdue statments. Does your last email mean that Mr epstein is breaching his agreement to promptly pay for all time/costs incurred up to 1/23 ? I will send a new statement covering everything from approx 12/15 through 1/23. Please let me know whether Mr Epstein will comply with your message of 1/23, or he will "push back" on this next statement. My next statement will be sent the day after Mr Epstein pays the other old staements. If he did actually send the check today, I should have the next statment mailed by thurs or fri. Thus far Mr Epstein has made 3 changes re where I should send the statements. In order to avoid further delay and confusion, please let me know where you want me to send the next statements. I apologize if this email has typos!, etc but its the best I can do while I'm in trial. I do not apologize for the tone of this note - I am hurt and upset - I think that Mr Epstein is taking advantage of me, and taking advantage of our (Roy/Bob) relationship. Will further discuss this w you by phone or in personm. Thanks

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Sent: Tue Feb 03 12:47:59 2009
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AND AFFILIATED PARTNERSHIPS

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www.kirkland.com

Jay P. Lefkowitz, [redacted]
To Call Writer Directly: [redacted]
lefkowitz@kirkland.com

Facsimile: [redacted]

September 2, 2008

VIA FACSIMILE (561) 820-8777

[redacted]
United States Attorney's Office
Southern District of Florida
500 South Australian Avenue, Suite 400
West Palm Beach, Florida 33401

*Re: Jeffrey Epstein*

Dear [redacted]:

In response to your letter dated August 26, 2008, I am confirming that Mr. Goldberger should continue to be listed as the contact person in the amended victim notification letters and should receive the carbon copies of those letters as they are sent.

Also, we plan on speaking to Mr. Josefsberg this week to discuss a procedure for paying his fees. We intend to comply fully with the agreement and Mr. Epstein will pay Mr. Josfsberg's usual and customary hourly rates for his work pursuant to the agreement facilitating settlements under 2255.

Sincerely,

Jay P. Lefkowitz

cc: [redacted], Chief, Northern Division
Jack Goldberger
Roy Black

# PodhurstOrseck

TRIAL & APPELLATE LAWYERS

Aaron S. Podhurst
Robert [redacted]. Josefsberg
Joel D[redacted]
Steven [redacted]. Marks
Victor M. Diaz, Jr.
Katherine W. Ezell
Stephen F. Rosenthal
Ricardo M. Martínez-Cid
Ramon A. Rasco
Alexander T. Rundlet
John Gravante, III

Robert Orseck (1934-1978)

Walter H. Beckham, Jr.
Karen Podhurst Dern
Of Counsel

February 20, 2009

Jay P. Lefkowitz, [redacted].
Kirkland & Ellis LLP
Citigroup Center
153 East 53rd Street
New York, NY 10022-4611

Dear Mr. Lefkowitz:

I received your letter dated February 13, 2009. What your client is doing is obvious, and it is in breach of his Non-Prosecution Agreement. The agreement speaks for itself. Enclosed is a copy of the marching orders I received from Mr. Sloman. Pursuant to these directions and the ethical requirements of the legal profession to zealously represent my clients, I have attempted to efficiently and effectively pursue my clients' claims against Mr. Epstein. Perhaps your client thought that he could victimize and intimidate countless underage girls, that he would then agree to provide minimal compensation to them for the damage he inflicted upon them and that I would then simply let them come in and "sign the paperwork" for the absolute minimum recovery. My role is not a clerical one where I merely document a settlement that simply offers the statutory *minimum* even though courts have provided recovery for *each occurrence*. What's more, your letter presumes that I should allow my clients to accept such an offer without fully evaluating their claims. Settling their cases in a vacuum would amount to malpractice.

As we see it, each of our 9 or 10 clients has three choices: to do nothing, to settle, or to sue your client. In order to make an educated decision, we are required to conduct a comprehensive review of each client's personal history, the events surrounding their abuse at the hands of Mr. Epstein and what has happened to them since he sexually exploited and abused them. Collateral interviews and psychological evaluations are crucial components of corroborating facts and assessing a fair damages calculation. Extensive legal research into their potential legal claims and resulting damages must also take place. Such an investigation is, of course, going to be helpful at trial if any of them choose to litigate their claims. This, however, does not change the fact that everything we've done is necessary in order to determine if we should settle. As a matter of fact, you and I discussed hiring Sandy Marks, a jury consultant. Again, such an exercise would be extremely helpful at trial, but an analysis of what would happen at trial is exceptionally beneficial at the settlement stage.

You are welcome to set up a conference call or visit us so we can go through my bills line by line in search of "any charges related to work performed beyond, or extraneous to, reaching a settlement." To be clear, *nothing* in our bills is extraneous to settlement of our clients' claims. Our bills represent our work on behalf of 9 or 10 clients. I will take this opportunity to remind you that of the $412,827.76 that we have sent you itemized bills for, only $163, 992.15 has been paid. Mr. Black wrote on February 3rd that he was advised that a check had been sent out that day. It had not. By the time we got *50%* of outstanding fees, outstanding bills were more than 90 days overdue. Failure to pay our fees jeopardizes your client's agreement with the United States Attorney's Office.

My exchange with Mr. Black (copies of e-mails are attached) illustrates that promises that have been written or said by you or Mr. Black have been breached. I find myself in a position where I do not know if Mr. Epstein is bound by what you or Mr. Black say. Before we go further, I need confirmation that you and/or Roy Black can commit Mr. Epstein.

One of Mr. Black's e-mails clearly states that "Jeffrey will not pay more for the fees and expenses without the start of settlement negotiations." I am frankly baffled by your client's misguided pretense. When I met with you on November 26, 2008, you said Mr. Epstein would not be ready to talk about settling until the end of January. Both you and Mr. Black did not return three or four calls to each of you between January 10 and approximately January 25. Just so the record is clear, we have diligently pursued reaching the stage of active settlement negotiations and have been stonewalled by your side, until your February 13th "take it or leave it" $50,000 per client offer.

In addition, I have attempted to tackle any procedural and logistical problems in an efficient, economical and timely manner. At each step, I have either encountered delay or a complete lack of response. For example, I wasted a lot of time and energy on your client's frivolous claim that I cannot represent my clients at trial. You shocked me with that position on November 21st and promised to get back to me to discuss it. Since we met in November, we haven't received a response regarding this issue. You apparently have finally abandoned this position. In addition, at that November meeting, I told you that some victims have severe psychological problems and that their claims warranted far in excess of $150,000 but that we are sensitive to concerns about them using the money otherwise. As a result, we discussed putting the money in special trusts expressly restricted for payment of psychological treatment. Again, I have received no response.

Finally, the March 13th cutoff date is nonsensical. I trust that you wouldn't dare be attempting to say that Mr. Epstein's offer is withdrawn after that. As I said before, your client is in clear breach of his Non-Prosecution Agreement. I am at a loss as to why he would be willing to face the prospect of numerous civil trials, which will be ugly for him, and a federal prosecution in order to avoid fairly compensating my clients for the harm he inflicted upon them.

Very truly yours,

Robert C. Josefsberg

cc: Roy Black
Alan Dershowitz

PodhurstOrseck
TRIAL & APPELLATE LAWYERS
City National Bank Building
25 West Flagler Street, Suite 800
Miami, Florida 33130


[redacted]
Assistant U.S. Attorney
Office of the U.S. Attorney
Seventh District of Florida
500 East Broward Blvd., 7th Floor
Fort Lauderdale, FL 33394

33394$3016 C001

# KIRKLAND & ELLIS LLP

AND AFFILIATED PARTNERSHIPS

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Jay P. Lefkowitz, [redacted]
To Call Writer Directly:
[redacted]
lefkowitz@kirkland.com

Facsimile:
(212) 446-4900

**Confidential**
**For Settlement Purposes Only**
**Pursuant to Rule 408**

March 3, 2009

**VIA FACSIMILE**
Robert [redacted]. Josefsberg, Esq.
Podhurst Orseck, P.A.
City National Bank Building
25 West Flagler Street, Suite 800
Miami, FL 33130

Dear Mr. Josefsberg,

I write in response to your letter dated February 20, 2009. First, there is no merit whatsoever to your contention that Mr. Epstein has breached the Non-Prosecution Agreement, and your implication that he has is simply unsupported by the facts. As you state in that letter, the "agreement speaks for itself" and should be honored as such. My February 13, 2009 letter to you was an attempt to ensure that the portion of the Agreement concerning restitution be carried out as intended and written. Indeed, our objections to your expanded role in representing the alleged victims and to Mr. Epstein's obligations to pay fees incurred outside of the settlement context are valid. Furthermore, nowhere in the Agreement or Addendum does it state that a fee dispute or contentions as to the exact role of the attorney representative constitute a breach of that Agreement. In fact, there is a requirement that fee disputes be resolved with a special master. As I further explain below, your letter and accompanying documents, as well as the description of services performed in your invoices, lead us to believe that there has been a misunderstanding as to your role.

With your letter, you enclosed a communication from Mr. Sloman to Judge [redacted] dated October 25, 2007 and an additional document, presumably also from Mr. Sloman, entitled "PROPOSAL FOR PROCEEDING ONCE ATTORNEY IS SELECTED." While you refer to these documents as your "marching orders," neither document is part of the signed Agreement between Mr. Epstein and the United States Attorney's Office ("USAO"). The October 25, 2007 letter was not even addressed to you, but rather to Judge [redacted], the individual responsible for selecting an appropriate attorney representative. And since the October 2007 letter was drafted, there have been several communications between Mr. Epstein's defense team and the USAO which served to further clarify the Agreement with respect the role of the attorney representative.

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Thus, this document may have contributed to the apparent misunderstanding concerning your defined responsibilities in this matter. In any case, your purported reliance on this letter raises more questions than it answers. For example, the letter clearly indicates that the parties were to "***jointly prepare*** a short written submission . . . regarding the role of the attorney representative and regarding Epstein's Agreement to pay such attorney representative his or her regular customary hourly rate . . ." (emphasis added). However, you never inquired as to the existence of such a joint statement to help inform you of your defined role. Indeed, you failed to reach out to anyone on Mr. Epstein's defense team to obtain such a document.

Even though the October 2007 letter does not provide any direct instructions as to your particular responsibilities, it does quote relevant portions of the Agreement which expressly limit Mr. Epstein's obligation to pay the attorney representative. Specifically, the Agreement "shall not obligate Epstein to pay the fees and costs of contested litigation filed against him." Furthermore, the proposed instructions are represented in a document that was not agreed upon between the USAO and Mr. Epstein's defense team. Indeed, we clearly rejected the notion that (1) the selected attorney be able to fulfill any role beyond negotiating a settlement, and (2) that Epstein would pay for any services beyond those incurred while trying to reach a settlement.

While we have no objections to your representation of the relevant individuals, we believe that your role, as made clear in the Agreement, is limited to settlement negotiations. In other words, under the Agreement, if an individual wants to consider any measure beyond settlement with Mr. Epstein, she must pursue those avenues through another lawyer. Based on the language of the Agreement, it is our position that you are not responsible for pursing your clients' claims, as you state in your letter.

Furthermore, Mr. Epstein is certainly not trying to "victimize and intimidate" anyone. The offer to settle was an earnest effort to avoid any further delay in resolving this matter. Notably, the government has expressly provided that it takes no position regarding potential claims of government witnesses.[1] Given this lack of support, Mr. Epstein's offer of $50,000 to resolve claims that are not time-barred (as we believe [redacted] [redacted]' claim to be), without any

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[1] On several occasions, USAO representatives have asserted that the government takes no position as to the claims of the individuals identified as alleged victims. For the sake of confidentiality, we will not produce the relevant documents. One such communication, however, was made in a December 6, 2007 letter from United States Attorney Acosta to myself, in which he stated that "the Office has no intention to take any position in any civil litigation arising between Mr. Epstein and any individual victim . . ."

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requirement to verify the allegations made, is more than reasonable.[2] And while you are surely entitled to your personal opinion as to the merits of our settlement offer, we remind you that you are under an obligation to discuss our offer with your clients and to allow each one to determine whether she would like to accept such an offer. If these individuals choose to reject Mr. Epstein's offer and consider potential litigation against Mr. Epstein, another lawyer, not paid by Mr. Epstein, will have to perform that work.

I hope these matters can be resolved in an amicable manner. I would welcome the opportunity to meet with you face-to-face so that we are able to move forward. I am certain that a great deal of the confusion can be resolved through an in-person meeting. Due to the fact that there are many lawyers involved, I fear that some your past correspondence was not returned in a timely manner. I will endeavor to make certain that this does not happen again.

Very truly yours,

Jay P. Lefkowitz

---

2 $50,000 represents the statutory minimum under 18 [redacted]. § 2255, a constitutionally questionably statute for reasons we will not address here, at the time of the alleged conduct. This is the amount for which Mr. Epstein agreed to settle claims with the relevant individuals pursuant to the terms of the Agreement.

# PodhurstOrseck

TRIAL & APPELLATE LAWYERS

Aaron S. Podhurst
Robert C. Josefsberg
Joel D. [redacted]
Steven C. Marks
Victor M. Diaz, Jr.
Katherine W. Ezell
Stephen F. Rosenthal
Ricardo M. Martínez-Cid
Ramon A. Rasco
Alexander T. Rundlet
John Gravante, III

Robert Orseck (1934-1978)

Walter H. Beckham, Jr.
Karen Podhurst Dern
Of Counsel

June 8, 2009

**Via Fax and U.S. Mail**
Robert Critton, Esq.
Burman, Critton, Luttier
& Coleman, LLP
515 North Flagler Drive, Suite 400
West Palm Beach, FL 33401

Re: Epstein Case
Our File No.: 30608

Dear Bob:

I was shocked when I heard from Bob Josefsberg that Jeffrey Epstein and counsel do not recall, or have decided to ignore, his contractual obligation to pay this firm's fees and costs relating to any of his victims/our clients who elect to settle their claims without filing suit. You asked Bob to put his position in writing, and this letter is our rough attempt to do so.

The Agreement

Paragraph 7 of the Non-Prosecution Agreement ("NPA") provides for the selection of an attorney representative ("Atty Rep") for the individuals who are on a list of individuals whom the United States has identified as victims, as defined in 18 [redacted]. § 2255 ("Victims"), which list was to be provided *and was* provided to Epstein's attorneys, Jack Goldberger and Michael Tien, after Epstein signed the NPA and was sentenced.

Subsequently, there was an Addendum to the Non-Prosecution Agreement ("Addendum"), the stated intent of which was to clarify certain provisions of page 4, paragraph 7 of the NPA. In paragraph 7A of the Addendum, it was agreed that the United States had the right to assign to an independent third-party, the responsibility of selecting the Atty Rep, subject to the good faith approval of Epstein's counsel. As you know, former Chief Judge Edward [redacted] was the independent third-party chosen by the United States in consultation with and with the good faith approval of

Epstein's counsel. Judge [redacted], in turn and in accordance with paragraph 7, selected our partner Robert [redacted]. Josefsberg as Atty Rep for the victims. Both parties had the right to object to his selection prior to his final designation. Mr. Josefsberg was formally designated as Atty Rep on or about September 2, 2008, without objection from either side.

Pursuant to paragraph 7 of the NPA, Mr. Josefsberg is to be paid for [his services as Atty Rep] by Epstein. Paragraph 7B of the Addendum directed the Parties to jointly prepare a short written submission to Judge [redacted] regarding the role of the Atty Rep and Epstein's Agreement to pay such Atty Rep his customary hourly rate for representing the victims. The United States prepared a proposal and submitted it to Judge [redacted], to which Epstein apparently objected. Not only did neither Epstein nor his counsel deign to join with the United States in preparing such a proposal, but they failed and refused to submit their own proposed protocol. In that circumstance, Epstein clearly waived his right to submit a joint proposal or any proposal at all. Accordingly, he has no right to object to the proposal submitted by the United States. A clear reading of the Addendum at 7B demonstrates that there was no disagreement, nor could there have been any misunderstanding regarding what is referred to as "Epstein's Agreement to pay . . . [Mr. Josefsberg's] regular customary hourly rate."

This obligation is reiterated in the first sentence of paragraph 7C. Epstein's choosing not to submit a proposal as to the role of the Atty Rep in no way relieved him of his obligation to pay the Atty Rep his regular hourly rate for his representation of the designated victims, so long as they are engaged in the settlement process. This is particularly apt when Epstein chose to avail himself of this settlement opportunity so as to preclude the Atty Rep's filing of a lawsuit on behalf of the victim. Epstein's obligation to pay the Atty Rep's fees and costs pursuant tot he NPA and its Addendum ceases only in the event that the Atty Rep files contested litigation against Epstein on behalf of a victim.

The Recent Settlement

During the last six months there have been meetings, emails and phone conversations between Roy Black, Jay Lefkowitz and Bob Josefsberg that corroborate our position. Please check with Jay and Roy as to their recollection of these matters.

Despite his putting up one road block after another, Mr. Epstein, through you as his counsel, and the Atty Rep recently settled the claim of one of Epstein's listed and identified victims, our client [redacted]. This firm is in the process of putting together our final bill relating to our representation of Ms. [redacted] and will be submitting it to you or Mr. Goldberger as soon as the entitlement issue is resolved. We fully expect Jeffrey Epstein to honor his agreement by paying the fees and costs related to this representation according to the terms of the NPA and the Addendum. We are also prepared to make a second settlement proposal (for another client) and expect similar

treatment of attorney fees in that matter.

Remedies

There are several alternatives available to us, should Jeffrey Epstein refuse to honor his agreement to pay according to those terms. Both our victim clients and the Atty Rep and his firm are and were intended to be third party beneficiaries of the NPA and the Addendum. As such, we have the right to bring suit for specific performance of and/or declaratory judgment regarding the terms of the agreement between Epstein and the United States. In the alternative, other Epstein counsel have stated that all fee disagreements should be resolved by a special master. We are not averse to that. I am sure that I need not remind you that with regard to the Atty Rep's work thus far, there has been complete performance on our side and partial performance by the Defendant. Epstein did make partial payment of our initially invoiced fees earlier in these proceedings. When he stopped paying, his counsel communicated that he would start paying again when there were settlements. This in itself constitutes an acknowledgment of his obligation to do so. Having initially paid and thus inducing continued performance by the Atty Rep, Epstein is now equitably estopped to deny his contractual obligation. The Atty Rep, on the other hand, has fully completed his part of the bargain by providing the necessary services to make it possible for [redacted] to settle her claim without filing a contested lawsuit, and the Atty Rep is entitled to be paid in full for those services by Epstein. Finally, there is the implied obligation of good faith and fair dealing inherent in every contract, including those intended to benefit third parties.

Please advise us of your position prior to Friday's hearing, because your position may influence our involvement at that hearing.

Very truly yours,

Katherine W. Ezell

Katherine W. Ezell

KWE/mce

[redacted] (USAFLS)

**From:** KATHERINE W. EZELL [redacted]
**Sent:** Tuesday, June 16, 2009 4:49 PM
**To:** [redacted] (USAFLS)
**Subject:** FW:
**Attachments:** 20090616162817672.pdf

I had attached a sticky to this one stating that it was followed by a letter stating that everything we discuss tomorrow will be confidential unless both parties agree in writing.

[redacted] (USAFLS)

**From:** KATHERINE W. EZELL [redacted]
**Sent:** Thursday, June 11, 2009 6:13 PM
**To:** [redacted] (USAFLS)
**Subject:** Letter from Critton Denying any Fees and hearing tomorrow

Hi, [redacted] I left you a phone message. We received a while ago a letter from Bob Critton who is seemingly incredulous that we believe we are entitled to any fees. If you are near a fax, I could send it to you. I will bring it to the hearing tomorrow. Kathy

# KIRKLAND & ELLIS LLP

AND AFFILIATED PARTNERSHIPS

Citigroup Center
153 East 53rd Street
New York, New York 10022-4611

Jay P. Lefkowitz, [redacted].
To Call Writer Directly:
[redacted]
jay.lefkowitz@kirkland.com

[redacted]

Facsimile:
[redacted]

www.kirkland.com

June 12, 2009

**VIA FEDERAL EXPRESS**

Ms. [redacted], Esq.
United States Attorney's Office
Southern District of Florida
500 South Australian Ave., Suite 400
West Palm Beach, Florida 33401

**Re: *Jeffrey Epstein***

Dear Ms. [redacted],

I am in possession of your June 12, 2009 letter giving notice of breach. I respectfully submit that the Motion to Dismiss that is referenced therein did not constitute a *willful* breach of Mr. Epstein's obligations under the non-prosecution agreement. Mr. Epstein's counsel unanimously determined that the filing of this Motion to Dismiss was not a breach of the non-prosecution agreement, and the Motion to Dismiss was filed by counsel without Mr. Epstein's final approval.

I want to inform you that immediately upon receipt of your letter, Mr. Epstein directed his counsel to file the attached Notice withdrawing all but issue number VIII of the previously filed Motion to Dismiss. The same issue also is described briefly in subparagraph D on page 3 of the Motion, which likewise was not withdrawn. Please note that this issue relates exclusively to the damages available under § 2255. The Notice has already been filed. If your continued review of the civil dockets causes you to have additional concerns about any other filing, consistent with the notice provisions of the non-prosecution agreement and consistent with our prior practice regarding such matters, please provide me with notice and the opportunity to address the same with you.

I believe that with today's filing withdrawing these issues Mr. Epstein, through counsel, has fully remedied any perceived breach. Please advise if you for any reason disagree.

Respectfully submitted,

Jay P. Lefkowitz, [redacted].

CC: [redacted] Esq.
[redacted] Esq.

**UNITED STATES DISTRICT COURT**
**SOUTHERN DISTRICT OF FLORIDA**

**CASE NO.: 09-CIV- 80591 – KAM**

[redacted] DOE NO. 101,

Plaintiff,

[redacted].

JEFFREY EPSTEIN,

Defendant.
_____/

**DEFENDANT JEFFREY EPSTEIN'S NOTICE OF WITHDRAWL OF ARGUMENTS I THROUGH VII OF THE DEFENDANT'S MOTION TO DISMISS PLAINTIFF'S FIRST AMENDED COMPLAINT (DE29)**

Defendant, JEFFREY EPSTEIN, by and through his undersigned counsel, hereby withdraws arguments I through VII as set forth in the Defendant's Motion to Dismiss the Plaintiff's First Amended Complaint (FAC) [DE 29], dated May 26, 2009. Defendant withdraws his arguments contained subparagraphs **A, B,** [redacted] and Sections **I** (The Complaint Must Be Dismissed Because Plaintiff Is Not A Minor), **II** (The FAC Must Be Dismissed Because The Defendant Has Not Been Convicted Of A Predicate Offense), **III** (Count One Of The FAC Must Be Dismissed Because It Does Not Please A Violation Of 18 [redacted]. § 2422(b)), **IV** (Count Two Must Be Dismissed Because It Does Not Plead A Violation Of 18 [redacted]. §2423(b)), [redacted] (Count Three Must Be Dismissed Because It Does Not Plead A Violation Of 18 [redacted]. § 2251, **VI** (Counts Four and Five Must Be Dismissed Because They Do Not Plead Violation of 18 [redacted]. §§ 2252(a)(1) Or 2252(a)(1), and **VII** (Count Six Must Be Dismissed Because 18 [redacted]. § 2252A(g) Was Not Enacted Until 2006).

Defendant will rely only on those arguments set forth in subparagraph **D**, on page 3, and Paragraph **VIII** (Any Surviving Count Should Be Merged Into A Single Count) of the

Defendant's Motion to Dismiss the First Amended Complaint Or, In The Alternative, For A More Definite Statement [DE 29] dated May 26, 2009.

Counsel for Defendant EPSTEIN

**Certificate of Service**

I HEREBY CERTIFY that a true copy of the foregoing was electronically filed with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record identified on the following Service List in the manner specified by CM/ECF on this 12th day of June, 2009

Robert [redacted]. Josefsberg, Esq.
Katherine W. Ezell, Esq.
Podhurst Orseck, P.A.
25 West Flagler Street, Suite 800
Miami, FL 33130
305 358-2800
Fax: 305 358-2382
[redacted]
*Counsel for Plaintiff*

Jack Alan Goldberger, Esq.
Atterbury Goldberger & Weiss, P.A.
250 Australian Avenue South
Suite 1400
West Palm Beach, FL 33401-5012
561-659-8300
Fax: 561-835-8691
jagesq@bellsouth.net
*Counsel for Defendant Jeffrey Epstein*

Respectfully submitted,

By: _____
ROBERT D. CRITTON, JR., ESQ.
Florida Bar No. 224162
rcrit@bclclaw.com
MICHAEL J. PIKE, ESQ.
Florida Bar #617296
mpike@bclclaw.com
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*(Counsel for Defendant Jeffrey Epstein)*

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Jay P. Lefkowitz, [redacted]
To Call Writer Directly:
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lefkowitz@kirkland.com

Facsimile:
[redacted]

June 15, 2009

**VIA FACSIMILE**

Ms. [redacted] Esq.
United States Attorney's Office
Southern District of Florida
500 South Australian Avenue, Suite 400
West Palm Beach, Florida 33401

*Re: Jeffrey Epstein*

Dear [redacted]

I am attaching a letter authored by my co-counsel, Robert Critton, on today's date. It represents our agreement with a proposal that Kathy Ezell indicated in a letter dated June 8, 2009 would be fully acceptable to her and Bob Josefsberg as a means to resolve expeditiously all outstanding fee issues regarding the attorney representative. Mr. Epstein has directed his counsel to take immediate steps to address and resolve the attorney representative's outstanding fee-related issues and we are doing so without delay. The suggestion of a Special Master, agreed to by both parties, to resolve the issues in the immediate future, will assure all parties that there will be no delay and no need for adversarial litigation regarding fees.

More generally, I want to assure you that Mr. Epstein has directed all counsel to make sure that there is no filing that could constitute a breach of the NPA. Accordingly, a new internal screening process has been established to provide focused decision-making on each filing. To the extent we believe any filing may be perceived as implicating any of the issues generically addressed in the NPA (a document including sentences within paragraph 8 that even Mr. Acosta agreed were "far from simple"), we intend to address such issues with you prior to any filing and hope that you will agree to review the draft filing and inform us whether or not from your perspective it would, if filed, constitute a "breach". This will be especially important regarding issues that we believe fall at the intersection of Section 2255 and the civil litigation. We reserve our right, if you believe a proposed filing to conflict with the NPA or if you wish not to address these issues with us, thereafter to address such substantive issues with the Court.

We hope that these proposals—in combination with our immediate withdrawal of the previously filed Motion to Dismiss—resolve all outstanding issues at the intersection of the NPA and 2255. Please advise if any remain.

Sincerely,

Jay P. Lefkowitz

Enclosure

cc: [redacted] Esq.

# BURMAN, CRITTON, LUTTIER & COLEMAN LLP

A LIMITED LIABILITY PARTNERSHIP


J. MICHAEL BURMAN, P.A.[1]
GREGORY W. COLEMAN, P.A.
ROBERT D. CRITTON, JR., P.A.[1]
BERNARD LEBEDEKER
MARK T. LUTTIER, P.A.
JEFFREY [redacted]. PEPIN
MICHAEL J. PIKE
HEATHER McNAMARA RUDA

[1] FLORIDA BOARD CERTIFIED CIVIL TRIAL LAWYER

ADELQUI J. BENAVENTE
PARALEGAL / INVESTIGATOR

BARBARA M. McKENNA
ASHLIE STOKEN-BARING
BETTY STOKES
PARALEGALS

RITA H. BUDNYK
OF COUNSEL


June 15, 2009

**Sent by E-mail and U.S. Mail**
Robert Josefsberg, Esq.
Podhurst Orseck, P.A.
25 West Flagler Street, Suite 800
Miami, FL 33130

Re: **Epstein Matter**

Dear Bob:

On June 8, 2009, Kathy Ezell wrote a letter to me regarding outstanding fee payment issues. At page 3, she stated that she was not adverse to an earlier proposal that had been discussed amongst the parties to rely on a Special Master to resolve outstanding fee-related issues. We agree with Kathy's "proposal" that we rely on a Special Master to resolve all outstanding fee issues. Let's work during our Wednesday meeting to select an appropriate Special Master and let's agree to see whether, in the interim, we can resolve these issues even before they are submitted to the S.M.

Cordially yours,

Robert D. Critton, Jr.

RDC/clz

cc: Jack Goldberger, Esq.


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**U.S. Department of Justice**

*United States Attorney*
*Southern District of Florida*

*500 S. Australian Ave, Ste 400*
*West Palm Beach, FL 33401*
*(561) 820-8711*
*Facsimile: (561) 820-8777*

June 17, 2009

DELIVERY BY ELECTRONIC MAIL
Jay P. Lefkowitz, Esq.
Kirkland & Ellis LLP
Citigroup Center
153 East 53rd Street
New York, New York 10022-4675

Re: Jeffrey Epstein

Dear Jay:

Thank you for your letter of June 15, 2009. I did not receive your letter until late yesterday afternoon because I am shuttling back and forth between the Fort Lauderdale and West Palm Beach offices. The best way to reach me is via e-mail.

With respect to the substance of your letter, the Office has not completed its review of Mr. Epstein's civil filings and correspondence related to the payment of the attorney representative's fees, so I cannot confirm that all outstanding issues have been resolved. If and when additional breaches are identified, timely notice will be provided in accordance with the terms of the Non-Prosecution Agreement.

As to your proposal, our Office cannot and will not become involved in the civil suits filed against Mr. Epstein; as counsel for Mr. Epstein has expressed on several occasions, it is inappropriate for the government to involve itself in civil litigation. We likewise do not think it is appropriate to review civil pleadings in order to provide advisory opinions, even at your request.

The duty to stay within the bounds of the Non-Prosecution Agreement lies with Mr. Epstein and he alone has the power to remain in compliance. Mr. Epstein has a highly skilled team to assist him, and compliance with the Agreement is not difficult, as you suggest. For example, it is not complicated to understand that, when a named victim files a claim

exclusively under Section 2255, Mr. Epstein cannot assert that there is no liability, just as providing the state plea agreement to our Office in advance of entering the state guilty plea was not complicated.

I remain hopeful that Mr. Epstein will take all of his obligations seriously and elect to err on the side of caution in making decisions that relate to the performance of his duties.

Sincerely,

Jeffrey H. Sloman
Acting United States Attorney

By [redacted]
Assistant United States Attorney

cc: [redacted], Chief, Northern Division
Jack Goldberger, Esq.
Roy Black, Esq.

# KIRKLAND & ELLIS LLP

AND AFFILIATED PARTNERSHIPS

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Jay P. Lefkowitz, [redacted]
To Call Writer Directly:
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lefkowitz@kirkland.com

Facsimile:
[redacted]

June 15, 2009

**VIA FACSIMILE**

Ms. [redacted] Esq.
United States Attorney's Office
Southern District of Florida
500 South Australian Avenue, Suite 400
West Palm Beach, Florida 33401

*Re: Jeffrey Epstein*

Dear [redacted]:

I am attaching a letter authored by my co-counsel, Robert Critton, on today's date. It represents our agreement with a proposal that Kathy Ezell indicated in a letter dated June 8, 2009 would be fully acceptable to her and Bob Josefsberg as a means to resolve expeditiously all outstanding fee issues regarding the attorney representative. Mr. Epstein has directed his counsel to take immediate steps to address and resolve the attorney representative's outstanding fee-related issues and we are doing so without delay. The suggestion of a Special Master, agreed to by both parties, to resolve the issues in the immediate future, will assure all parties that there will be no delay and no need for adversarial litigation regarding fees.

More generally, I want to assure you that Mr. Epstein has directed all counsel to make sure that there is no filing that could constitute a breach of the NPA. Accordingly, a new internal screening process has been established to provide focused decision-making on each filing. To the extent we believe any filing may be perceived as implicating any of the issues generically addressed in the NPA (a document including sentences within paragraph 8 that even Mr. Acosta agreed were "far from simple"), we intend to address such issues with you prior to any filing and hope that you will agree to review the draft filing and inform us whether or not from your perspective it would, if filed, constitute a "breach". This will be especially important regarding issues that we believe fall at the intersection of Section 2255 and the civil litigation. We reserve our right, if you believe a proposed filing to conflict with the NPA or if you wish not to address these issues with us, thereafter to address such substantive issues with the Court.

We hope that these proposals—in combination with our immediate withdrawal of the previously filed Motion to Dismiss—resolve all outstanding issues at the intersection of the NPA and 2255. Please advise if any remain.

Sincerely,

Jay P. Lefkowitz

Enclosure

cc: Karen Atkinson, Esq.

BURMAN, CRITTON, LUTTIER
& COLEMAN LLP

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PARALEGALS

RITA H. BUDNYK
OF COUNSEL

June 15, 2009

**Sent by E-mail and U.S. Mail**
Robert Josefsberg, Esq.
Podhurst Orseck, P.A.
25 West Flagler Street, Suite 800
Miami, FL 33130

Re: **Epstein Matter**

Dear Bob:

On June 8, 2009, Kathy Ezell wrote a letter to me regarding outstanding fee payment issues. At page 3, she stated that she was not adverse to an earlier proposal that had been discussed amongst the parties to rely on a Special Master to resolve outstanding fee-related issues. We agree with Kathy's "proposal" that we rely on a Special Master to resolve all outstanding fee issues. Let's work during our Wednesday meeting to select an appropriate Special Master and let's agree to see whether, in the interim, we can resolve these issues even before they are submitted to the S.M.

Cordially yours,

Robert D. Critton, Jr.

RDC/clz

cc: Jack Goldberger, Esq.

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Facsimile:
[redacted]

June 19, 2009

**VIA FEDERAL EXPRESS**

Ms. [redacted], Esq.
United States Attorney's Office
Southern District of Florida
500 South Australian Avenue, Suite 400
West Palm Beach, Florida 33401

*Re: Jeffrey Epstein*

Dear [redacted],

I appreciate your letter of June 17, 2009. I sincerely hope that any and all issues that could generate an adversarial relationship between Mr. Epstein and the United States Attorney's Office are in our past. Like you, we hope that the ongoing, complex, and at times vigorous litigation will not again require your involvement, nor result in any belief on your part that any legal position taken by Mr. Epstein's counsel conflicts with the Non-Prosecution Agreement ("NPA").

In order to avoid future misunderstandings, however, I would like to have a discussion with you specifically about our ongoing obligations as you understand them under the NPA. As you know from past experience, and as Mr. Acosta previously acknowledged in letters to my partner Ken Starr (on December 4, 2007) and Lilly [redacted] Sanchez (on December 19, 2007), the language of ¶ 8 is "far from simple," and, in certain respects, subject to significant ambiguity.

I believe it is both necessary and appropriate to seek immediate clarification from the government about its understanding of a few provisions in the NPA. It is likely by no fault of our own that these issues will come before a judge or an independent third party, whose job it will be to interpret the intent of the parties. In those circumstances, I think the court would most likely turn to both of us and directly seek our views, as the drafters of the agreement, before rendering its own opinion. Therefore, I believe it would bring about the finality that we both seek in a much reduced time frame if we could discuss several of the more ambiguous provisions contained in the NPA.

One specific example comes to mind. First, we clearly understood during the course of negotiating the NPA, and believe that both the language of the NPA and our prior correspondence with your Office confirm, that the waiver of liability set forth in Paragraph 8 at most was designed to allow an identified individual the right to assert a single violation of a section 2255 predicate. The waiver of liability does not embrace situations where a particular plaintiff asserts multiple violations. Thus, compliance with paragraph 8's waiver of liability would require ***at most*** that Mr. Epstein stipulate to the existence of a single enumerated predicate that would entitle an otherwise eligible plaintiff to actual damages (or the applicable statutory minimum damages where actual damages fall short of that floor), leaving aside the issue of whether the waiver is applicable to contested litigation or only the cases where there would be agreed damage resolutions. In addition, if we believe that a predicate act is time-barred, as indeed we understand was the case with respect to all such acts in relation to one plaintiff, a proper construction of the waiver of liability would not preclude the reliance on a statute of limitations defense.

Given your Office's prior acknowledgements that the language of the NPA is far from clear, we very much would appreciate an opportunity to discuss Paragraph 8 with you in the very near future in order to clarify a few pivotal questions raised by the NPA. I assure you that Mr. Epstein intends to abide fully by the terms of the NPA. And it is my sincere hope that our discussion can avert future risks that anything we do will cause you to believe that there has been a breach of the NPA.

Finally, I enclose a letter in response to your June 15 letter in order to provide you with our perspective on the issues you raised. I hope our differing views on certain events over the past several years as reflected in my letter will not in anyway divert us from a common goal of having Mr. Epstein complete his NPA obligations without further tension with your Office.

Sincerely,

Jay P. Lefkowitz, [redacted]

Enclosures

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Jay P. Lefkowitz, [redacted]
To Call Writer Directly:
[redacted]
lefkowitz@kirkland.com

Facsimile:
[redacted]

June 19, 2009

**VIA FEDERAL EXPRESS**

Ms. [redacted] Esq.
United States Attorney's Office
Southern District of Florida
500 South Australian Avenue, Suite 400
West Palm Beach, Florida 33401

*Re: Jeffrey Epstein*

Dear [redacted]:

We prepared this answer in response to your letter dated June 15, 2009 and before receiving your follow up letter of June 17, 2009. At this point it has been almost three years since the federal government first intervened in what was originally a matter investigated and charged by state prosecutorial authorities. It has been almost a year since Mr. Epstein pleaded guilty in state court and began serving his sentence in county jail, pursuant to the terms and as a direct result of the federal Non-Prosecution Agreement (the "NPA"). When Mr. Epstein was sentenced, the U.S. Attorney promised me and my co-counsel that the United States Attorney's Office's involvement would cease with Mr. Epstein's execution of the NPA and incarceration in state custody. We were also promised that the federal government would not intervene in discretionary state or county decisions regarding the implementation of Mr. Epstein's sentence.

We take this opportunity to address in detail each of the alleged instances you describe to support your position that Mr. Epstein has engaged in a pattern of breaching the NPA. Mr. Epstein's overriding commitment is, and has always been, to complete his jail sentence, fulfill his other obligations under the NPA, and reach final settlements of pending section 2255 cases with plaintiffs who are agreeable to such settlements. We respectfully submit (and support through documentary evidence) that there have been no past breaches of the NPA. There have been no "willful" breaches of the NPA. There has been no pattern of breaches of the NPA.

As an initial matter, it is important to consider your letter of June 15 and its contents in context. Mr. Epstein has satisfied, and continues to satisfy, his obligations pursuant to the NPA. Mr. Epstein pleaded guilty to a registerable state offense. He has already registered as a sex

offender, and has served over 11 months of his sentence in county jail. While such a plea and punishment were not otherwise sought by the State Attorney, Mr. Epstein agreed to the plea, the sentence, and the obligation to register as a sex offender as a direct result of obligations he agreed to undertake pursuant to the NPA. Furthermore, Mr. Epstein has already paid over $300,000 in civil settlements and fees for the attorney representative, and has agreed to submit issues regarding further fees to a Special Master pursuant to a proposal suggested by the attorney representative himself. The claimants whose matters have already been settled were identified by you as victims and, in one case, as a sign of good faith, Mr. Epstein paid a settlement to an individual he had no recollection of ever meeting, solely because she appeared on your July 2008 list.

We are prepared to address each of the statements contained in your June 15 letter. First, your statement that Mr. Epstein did not use his "best efforts" to enter his guilty plea and to be sentenced is, respectfully, without merit. Exhibit 1, June 15, 2009 Letter at 2. The date of entry of the state plea was deferred with the express written consent of United States Attorney Acosta, who recognized and expressly provided us with the opportunity to pursue an independent assessment of this matter by the Justice Department. The subsequent nine-month "delay" was a direct result of the Justice Department's determination that it was appropriate to convene an intense and time-consuming review. Thus, the delay was not dictated at all by Mr. Epstein, but instead, by the review process agreed to and, if you recall, initiated by Mr. Acosta.

On June 23, 2008, the Justice Department concluded its final review and only seven days later, Mr. Epstein promptly entered his plea (on June 30, 2008) and immediately began serving his sentence. As the following timeline of events leading up to Mr. Epstein's entry of plea makes clear, the facts do not support your conclusion that Mr. Epstein willfully breached the NPA by delaying his sentence, and, instead, compellingly demonstrates that Mr. Epstein's participation in high-level Department of Justice reviews cannot factually or legally ground a claim that he "willfully" breached the NPA:

- The NPA, signed on September 24, 2007, provides that Mr. Epstein "begin serving his sentence not later than January 4, 2008." *See* Exhibit 2, NPA ¶ 11.

- On November 28, 2007, Mr. Epstein's defense counsel contacted Assistant Attorney General Alice Fisher to request a review of certain provisions of the NPA. We informed the USAO of this request the very next day in a letter to Mr. Acosta. *See* Exhibit 3, November 29, 2007 Letter from J. Lefkowitz to U.S. Attorney Acosta at 4.

- In a December 4, 2007 letter, Mr. Acosta stated that he supported the defense's appeal to Washington. *See* Exhibit 4, December 4, 2007 letter from U.S. Attorney Acosta to K. Starr with a copy to AAG Alice Fisher at 5 ("I do not mind this Office's decision being

appealed to Washington, and have previously directed our prosecutors to delay filings in this case to provide defense counsel with the option of appealing our decision.").

- On December 11, 2007, pursuant to Mr. Acosta's request, the defense team sent him submissions detailing the defense's concerns related to the NPA. *See* Exhibit 5, December 11, 2007 Letter from K. Starr to U.S. Attorney Acosta.

- On December 14, 2007, Mr. Acosta met with members of the defense team to discuss the serious issues raised about the NPA.

- In a December 19, 2007 letter, Mr. Acosta stated that "the issues raised are important and must be fully vetted irrespective of timeliness concerns." *See* Exhibit 6, December 19, 2007 Letter from U.S. Attorney Acosta to Attorney Lilly [redacted] Sanchez at 3. He also stated that he had spoken with AAG Fisher to ask that she review this matter and to expedite the process. *Id.*

- In the beginning of January, 2008, Mr. Acosta and I discussed the need for further consideration of the issues raised by the defense. He postponed the plea and sentencing until the Child Exploitation and Obscenity Section (CEOS) was finished with its review of the case.

- In a February 29, 2008 email I sent to Mr. Acosta, I confirmed that that "there were significant irregularities with the deferred prosecution agreement" and that he would ask CEOS to evaluate the matter. I also confirmed Mr. Acosta's agreement to postpone the state plea deadline until after the matter was reviewed. On that same day, First Assistant U.S. Attorney Sloman responded in writing as follows: "Please be assured that it has not, and never has been, this Office's intent to interfere or restrict the 'review process' for either Mr. Epstein or CEOS. I leave it to you and CEOS to figure out how best to proceed and will await the results of that process." *See* Exhibits 7 and 8, February 29, 2008 Emails to U.S. Attorney Acosta and from Assistant U.S. Attorney Sloman.

- Given that CEOS determined that it would not review many of the defense's objections and that its review would be limited on the rest of the objections, CEOS's decision, rendered on May 15, 2008, left open the need for a more thorough review of critical issues by others at the Justice Department.

- In a May 28, 2008 email from Mr. Sloman to myself, Mr. Sloman further postponed the deadline to plead until the Deputy Attorney General's Office (DAG) completed its review. *See* Exhibit 9, May 28, 2008 Email from Assistant U.S. Attorney Sloman to J. Lefkowitz.

- A final letter of determination was not issued by the Department of Justice until June 23, 2008.

- Just one week after that date, Mr. Epstein promptly entered his plea and immediately began serving his state sentence on June 30, 2008.

While you state that a breach occurred because Mr. Epstein and the defense team did not provide you with the state plea documents until the last business day before the plea, neither Mr. Epstein nor his counsel bear sole responsibility for timing of the delivery of these documents. It was the responsibility of the State Attorney's Office to provide the defense with the plea agreement. Defense counsel did not receive the plea agreement from the State until 10:00 A.M. on June 27, 2008 (the Friday before the plea). *See* Exhibit 10, June 27, 2008 Email from State Attorney Lanna Belohlavek to J. Goldberger. Once the plea agreement was reviewed by Mr. Epstein's defense team, Mr. Goldberger sent it to you that same afternoon. At 5:55 P.M. on June 27, 2008, following your receipt of the agreement sent to you by Mr. Goldberger, Messrs. Black and Goldberger received a responsive letter from you alleging that the plea agreement violated the NPA. *See* Exhibit 11, June 27/28, 2008 Email String between Assistant U.S. Attorney [redacted] and R. Black and J. Goldberger (attaching Notice of Non-Compliance).

Second, you state that language contained in the first draft of the plea agreement proposed by the State violated the NPA, because it called for community control in lieu of jail. Exhibit 1, June 15, 2009 Letter at 2. You now suggest that this "error" evidences Mr. Epstein's alleged efforts to undermine the NPA. I respectfully submit that you are mistaken in both cases. The language in the first draft of the plea agreement was prepared by the State and, as stated above, it was not sent to the defense until the very day that it was sent to you.

Moreover, as Mr. Goldberger confirmed to you in a telephone conversation on the same day that he received your June 27 letter, the plea agreement, as originally drafted by the State, would have resulted in the exact same 12-month and 6-month consecutive jail sentences, followed by one year of community control, as was required by the NPA and ultimately imposed on Mr. Epstein. Although defense counsel asked the State to change the language of the plea agreement to alleviate your concerns, the same exact sentence and period of incarceration as required by the NPA would have been imposed on Mr. Epstein had the language of the State's first draft been allowed to apply. *See* Exhibit 11, June 27/28, 2008 Email String between Assistant U.S. Attorney [redacted] and R. Black and J. Goldberger (confirming a telephone conversation between the parties on June 27 that the state plea agreement was in compliance with the NPA and indicating a request by Assistant U.S. Attorney [redacted] to modify the language in the state plea agreement); *see also* Exhibit 12, the initial version and the signed version of the state plea agreements.

The bottom line here is that while Florida counsel for Mr. Epstein fully believed that the initial language in the State's draft would result in a sentence identical to the mandates of the NPA, changes were made solely to conform to your requests. Neither the USAO or the administration of federal criminal justice suffered any prejudice: lawyers often make linguistic alterations of form; we did so here. The changes were made in short order, namely, during the Friday and Saturday before Mr. Epstein's state plea; the plea and plea agreement completely complied with the NPA as did Mr. Epstein's sentence; and there was neither a breach, nor harm. Moreover, all communications were through counsel. Mr. Epstein was not a party to these communications and in no way can be considered, factually or legally, to have committed a "willful" breach of the NPA in this regard.

Third, you state that defense "counsel obstructed [your] ability to abide by [your] obligations to notify the victims of the outcome of the federal investigation." Exhibit 1, June 15, 2009 Letter at 2. We believe that this statement misconstrues the intentions and conduct of the defense team and, does not support any charge of "obstruction" against Mr. Epstein, as would be required to sanction him for a "willful" breach of the NPA. In October 2007, a full nine months before Mr. Epstein was sentenced, we first raised the issue of the notification. On October 10, 2007, I stated in a letter to Mr. Acosta that the defense team did not believe "it was the government's place to be co-counsel to the identified individuals," and reasonably proposed that the alleged victims be contacted by the selected attorney representative. *See* Exhibit 13, October 10, 2007 Letter from J. Lefkowitz to U.S. Attorney Acosta at 4-5.

Then, on November 28, 2007, you sent defense counsel the proposed victim notification letter indicating that the alleged victims had a federal right to be notified of the resolution of this matter pursuant to the Crime Victims' Rights under § 3771. *See* Exhibit 14, November 29, 2007 Draft Victim Notification Letter from Assistant U.S. Attorney [redacted]. Mr. Epstein's counsel objected to your draft letter and the proposed method and procedure for notifying the alleged victims and challenged whether you were in fact obligated to notify these individuals pursuant to 18 [redacted] § 3771. Those objections were made in a timely and appropriate manner and our dialogue regarding notification issues continued. As you know, the notification letter was not finalized for several months.

The key point here is that our objections to the letter were made in good faith and were well-founded. After all, on December 6, 2007, Mr. Acosta agreed to many of our objections and adopted several of our modifications to resolve problems raised by the draft notification letter. *See* Exhibit 15, December 6, 2007 Letter from U.S. Attorney Acosta to J. Lefkowitz. This fact confirms both the good-faith nature of our objections and that neither Mr. Epstein nor his counsel could be considered to have violated the NPA by raising those objections in the first place.

Fourth, Mr. Epstein did not, as you stated, refuse "to fulfill promptly Mr. Epstein's obligation to secure the services of an attorney representative for the victims." Exhibit 1, June

15, 2009 Letter at 2. It was the United States' obligation to select a suitable attorney representative, subject to the good-faith approval of Mr. Epstein's counsel. *See* Exhibit 2, NPA ¶ 7. Indeed, due to a concern we had raised, your Office specifically modified the procedure to select an attorney representative and delegated that task to Judge [redacted]. *See* Exhibit 16, Addendum to NPA ¶ 7A. Again, the fact that your Office accommodated our concerns validates their legitimacy and undermines any claim that the NPA was breached by raising those concerns with you. To the contrary, Mr. Epstein executed the Addendum in an attempt to resolve outstanding, highly unorthodox and complex issues at the intersection of civil and criminal law. A letter to Judge [redacted] (authored by then FAUSA Sloman) dated October 25, 2007 followed. *See* Exhibit 17, October 25, 2007 Letter to Judge [redacted].

Once Mr. Podhurst's firm was selected by Judge [redacted], Mr. Epstein did not object to the selection. Moreover, as you have acknowledged to the court, the open issues involving the attorney representative portions of the NPA were not finally resolved until September 3, 2008. *See* Exhibit 18, December 22, 2008 [redacted] Supplemental Declaration at 3 ¶ 9. Only five days later, on September 8, 2008, I sent a letter to Robert Josefsberg advising him that Mr. Epstein would pay his fees pursuant to the NPA for his role as an attorney representative. *See* Exhibit 19, September 8, 2008 Letter from J. Lefkowitz to R. Josefsberg. Furthermore, in an effort to comply with the obligations under the NPA, Mr. Epstein already has paid Mr. Podhurst's firm over $160,000 in legal fees, despite significant concerns over the scope of the work for which he is billing Mr. Epstein, and has agreed with Mr. Josefsberg's proposal that a Special Master be empowered to resolve any fee related issues that the Podhurst firm and Mr. Epstein's civil counsel cannot resolve. *See* Exhibit 20, June 15, 2009 Letter from Robert Critton to Kathy Ezell. There is nothing about the exchanges between counsel and the USAO regarding the attorney representative that even begins to approach a "willful" breach by Mr. Epstein.

Fifth, you suggest that Mr. Epstein willfully breached the NPA because of the actions of Mr. Tein and Mr. Goldberger, whom you state failed to approve the victim notification letter that contained incorrect information. *See* Exhibit 1, June 15, 2009 Letter at 2. The incorrect information in the letter was a proposed unilateral modification to the NPA without prior approval by Mr. Epstein or any member of the defense team. It was only first suggested by your Office in a letter from Mr. Acosta on December 19, 2007. We never agreed to that language. In fact, I personally raised several objections to the suggested modification in my letter to Mr. Acosta, dated December 21, 2007. *See* Exhibit 21, December 21, 2007 Letter from J. Lefkowitz to U.S. Attorney Acosta. I personally became aware of the inclusion of that language on Wednesday, August 13, 2008 and discussed the matter with you immediately. *See* Exhibits 22 and 23, August 13 and 15, 2008 Letters from Assistant U.S. Attorney [redacted] to J. Lefkowitz (confirming that the "December modification" is not a part of the NPA). Again, that oversight was not a willful breach or an expression of intent to violate the terms of the Agreement, but instead represented the efforts of counsel, acting in good faith, in an attempt to insure that the letter contained only previously agreed-upon language.

Sixth, you raise the issue of a delayed withdrawal of a motion to quash. *See* Exhibit 1, June 15, 2009 Letter at 2-3. There is no motion to quash that still remains pending. The fact that the motion was not withdrawn for some time was merely due to an administrative oversight that has long been remedied, but at no time did it prejudice the Government in any way. Nor did it result from an effort by myself or co-counsel to gain some tactical advantage. Furthermore, no effort was made by any counsel to seek a judicial decision on the pending motion. The motion had no adverse effect on the Government, and the delay in its withdrawal is legally and factually unrelated to the type of material and willful breach that alone could warrant remedies—not least of all because Mr. Epstein has suffered irreversible prejudice by complying with the core provisions of the NPA. Again, he has been imprisoned, he has pled guilty, he is registered, he has paid sums to claimants, all to comply with his obligations under the NPA.

Seventh, you state that additional issues arose in November regarding the issuance of work release to Mr. Epstein. Exhibit 1, June 15, 2009 Letter at 3. We have previously reviewed this very matter with you and other individuals in your Office in November 2008. At that time, Mr. Roy Black met with you, [redacted], [redacted], and [redacted] in Miami to review the work release issue. Among other significant documents shown to you, we presented you with your own email in which you had previously acknowledged that the sheriff had discretion in the matter. *See* Exhibit 24, July 3, 2008 Email from Assistant U.S. Attorney [redacted] to Michael Gauger ("If Mr. Epstein is truly eligible for the [work release] program, we have no objection to him being treated like any other similarly situated prisoner . . ."). Furthermore, Mr. Acosta, as already stated, had previously assured me and other counsel that the USAO would not interfere in the ordinary implementation of discretionary administrative decisions by state or county officials. We believe we were under no obligation (in the NPA or anywhere else) to notify you of such discretionary and ordinary state-made decisions, and the fact that your Office confirmed that Mr. Epstein was entitled to the same discretionary administrative decisions as other similarly situated inmates fundamentally undermines any claim that Mr. Epstein breached the NPA in connection with the state and county officials' decision. In any event, after thoroughly reviewing and evaluating Mr. Epstein's application, the Palm Beach County Sheriff's Office properly exercised its discretion, in full compliance with its stated requirements, policies and procedures, to grant Mr. Epstein work release. In addition, after the Sheriff's Office received a multi-page letter from you to Captain Sleeth, which recited the very allegations of errors on Mr. Epstein's work release application to which you refer in your latest letter, each allegation was fully reviewed, and the Sheriff's office found its initial decision appropriate.

Eighth, it is both unreasonable and unjustifiable to hold Mr. Epstein responsible—never mind declare him in breach—with regard to Judge McSorley's *nunc pro tunc* order. Exhibit 1, June 15, 2009 Letter at 3. Neither Mr. Epstein nor defense counsel had anything to do with and certainly no prior knowledge of this order. Defense counsel only learned of it after you brought it to our attention. The facts are as follows: the Department of Corrections requires an order

placing someone on community control before the Department of Corrections will supervise that person. Judge Pucillo, the retired judge that took Mr. Epstein's plea, inadvertently neglected to enter the order placing Mr. Epstein on Community Control 1. When Judge McSorley learned of this, she properly entered the order *nunc pro tunc* to the date of the plea. *See* Exhibit 25, Order of Community Control. If you will note on the 3-page court event form, circled at the top of page 2, is "[redacted].1" (community control 1). Mr. Epstein was properly placed on community control 1 on the day of his plea to begin only after he completes his jail sentence, and the *nunc pro tunc* order simply ratifies the oral pronouncement made by the court at the time of the plea. Given that the NPA expressly provides that Mr. Epstein is to serve a sentence of 12 months in "community control consecutive to his two terms in county jail," Exhibit 2, NPA ¶ 2(b), your assertion that the inclusion of community control "directly contradicted the terms of the" NPA is incorrect.

Finally, the motion to dismiss that was the topic of discussion on June 12 has been withdrawn. As indicated in the letter I sent you on June 15, we have adopted an internal screening process aimed at eliminating future concerns about anything that reasonably could be considered a breach of the NPA. *See* Exhibit 26, June 15, 2009 Letter from J. Lefkowitz to Assistant U.S. Attorney [redacted]. Mr. Epstein has directed all counsel to make certain that no filing could be construed as a breach of the NPA. Furthermore, we proposed a supplemental new process, as stated in my June 15 letter to you, that would have provided you, if you chose, the opportunity to review any such filing *before* it is submitted to the court so that you may determine whether or not it constitutes a breach.

That being said, I wish to reiterate our firm belief that the NPA allowed Mr. Epstein the right to contest litigation whenever an express waiver of all other state, federal or common law claims or the right to bring contested litigation in the future was not sufficiently or correctly pleaded. As you know, we spent several weeks negotiating the language of the NPA with you and Mr. Acosta. We firmly believe that the motion to dismiss that was recently filed (and then promptly withdrawn) did not constitute a violation.

First, Paragraph 8 of the NPA clearly limits those who may benefit from any waivers by Mr. Epstein to an "identified individual" who "elects to proceed exclusively under 18 USC 2255, ***and*** *agrees to waive any other claim for damages, whether pursuant to state, federal, or common law*". Exhibit 2, NPA ¶ 8. More is required of a plaintiff than to simply allege, as did [redacted] Doe 101, that she "exclusively seeks civil remedies pursuant to 18 USC 2255." Exhibit 27, Amended Complaint ¶ 24. Such an averment satisfies only the exclusivity portion of the twin conditions set forth in the NPA at ¶ 8. The word "and" followed by the requirement of an affirmative waiver of any other claims, federal, state, or common law mandates an additional affirmative act by the plaintiff. No such waiver was filed or even pled. [redacted] Doe 101 did no more than restate that her complaint in civil action no 9:09-cv-80591-KAM was only for 2255 damages. She never affirmatively waived all future claims in state or federal court, as required by the NPA.

Because of this threshold issue, [redacted] Doe 101 did not, through the attorney representative, satisfy the NPA ¶ 8 requirements.[1] While Mr. Epstein's counsel still believe for these reasons that the motion did not conflict with Mr. Epstein's obligations under the NPA, the motion was in relevant part withdrawn at Mr. Epstein's insistence—further demonstrating that Mr. Epstein has prioritized his desire to avoid contentious additional litigation with the USAO over this matter.

In short, our good-faith efforts to raise litigation issues will be more carefully scrutinized in the future as to limit the possibility of being construed by your Office as supporting a notice that Mr. Epstein is in "willful" breach. Issues regarding the scope of the ¶ 8 waivers are unorthodox and even unprecedented. They result in part from the NPA being executed before you identified the individuals listed, *see* Exhibit 2, NPA ¶ 7, and, importantly, given the evolution of the civil litigation, before any joint statement as required by the terms of the NPA was provided to Mr. Josefsberg. Nevertheless, as we stated on June 15, we had intended to provide you with future filings in advance so that we could discuss their interaction with the NPA before rather than after any filing, However given your rejection of that procedure, in a good faith attempt to avoid future conflict, we would nevertheless hope to clarify some of the more ambiguous parts of ¶ 8 of the agreement with you as soon as possible. To repeat, it is Mr. Epstein's overriding intent to fulfill his obligations under the NPA -- an intent we as his attorneys will do everything in our power to effectuate.

The facts demonstrate that Mr. Epstein has clearly not committed any breach of the NPA, much less a willful breach. As we have reiterated and as has been proven by Mr. Epstein's own actions, Mr. Epstein has no intention of breaching the NPA and has never had any such intention. Although you claim that Mr. Epstein received the benefits of the NPA and the Government only its burdens, I believe the reality is to the contrary. Mr. Epstein has suffered significant and irreversible prejudice: he has been imprisoned in a county jail for almost a year, he has pleaded guilty to a state felony that required sex registration and has, in fact, registered as a sex offender, he accepted civil burdens in his ongoing litigation that may result in millions of dollars of future payments, he has settled cases that could be won, in deference to the NPA and he is paying and

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[1] That [redacted] Doe 101 did not meet the *threshold* requirements for the imposition of the waiver of liability portion of Paragraph 8 of the NPA is demonstrated by the filings of [redacted] Doe II in 09-80469-CIV-Marra, a federal lawsuit filed in March, 2009 seeking "exclusively 2255" damages, while [redacted] Doe II already had a pending state court suit filed in July of 2008 seeking damages against Epstein for sexual assault and conspiracy. [redacted] Doe II in her federal complaint alleged Epstein could "not contest liability for claims brought exclusively pursuant to 18 [redacted]. §2255". Exhibit 27, Amended Complaint ¶ 24. In her response to Epstein's Motion to Dismiss in which Epstein challenged the "exclusivity" claim, she argued at page 7 that "Epstein appeared to be violating the agreement . . . [NPA]". However, her attorney withdrew that claim at the June 12, 2009 hearing (and in her subsequent Amended Response) agreeing that the state filing negated the "exclusivity" of the federal 2255 lawsuit. On the current record, nothing prevents [redacted] Doe 101 from filing a parallel state court claim.

will pay hundreds of thousands of dollars in legal fees for his adversaries to pursue him in court. The Government may have endured some delays and administrative costs due to certain of its own its decision — such as to evaluate the Sheriff's exercise of discretionary authority in implementing the Sheriff's own work release program —but neither the Government nor any civil plaintiff has suffered any harm, any prejudice, or any disadvantage as a result of the events you have identified. We signed a contract -- the NPA -- with you in good faith, and in exchange, Mr. Epstein gave consideration that cannot be returned (12 months of his freedom and his reputation). He is legally entitled to its benefits. He committed no "willful breach." As such, we believe it would constitute both a contractual and constitutional error to seek further remedy or to in any way withdraw from the NPA.

We will continue to make our best efforts to communicate with you about any potential problems and hope, in the interest of fairness, you will do the same.

Sincerely,

Jay P. Lefkowitz, P.C.

Enclosures

LEOPOLD-KUVIN, PA
CONSUMER JUSTICE ATTORNEYS

July 6, 2009

[redacted].
Assistant U.S. Attorney
Southern District of Florida
500 E. Broward Blvd, 7th Floor
Ft. Lauderdale, FL 33394

**Re: B.B. [redacted]. JEFFREY EPSTEIN**
**OUR FILE NO.: 080303**

Dear Ms. [redacted]:

As you are aware, this firm represents Plaintiff, Jane Doe, a/k/a/ B.B. in the civil litigation against Jeffrey Epstein styled *B.B. [redacted]. Jeffrey Epstein,* case no.: 502008CA037319 MB AB. We are hereby requesting that a copy of the non-prosecution agreement be provided to my office as soon as possible.

If there are any questions or concerns regarding the production of this agreement, please contact me at once.

Sincerely,

SPENCER T. KUVIN

STK/mlb

**U.S. Department of Justice**

*United States Attorney*
*Southern District of Florida*

*500 E. Broward Boulevard, 7th Floor*
*Ft. Lauderdale, FL 33394*
*(954) 356-7255*

July 7, 2009

DELIVERY BY ELECTRONIC MAIL
Jay P. Lefkowitz, Esq.
Kirkland & Ellis LLP
Citigroup Center
153 East 53rd Street
New York, New York 10022-4675

Re: Jeffrey Epstein

Dear Jay:

Thank you for your letters of June 19th. From your letters, it appears that you have misconstrued the Office's past efforts at alleviating Mr. Epstein's unfounded fears of disparate treatment. You seem to have interpreted those efforts as either: (1) an acknowledgement of the validity of those fears, or (2) an acquiescence to the efforts of Mr. Epstein to avoid the full terms of the Non-Prosecution Agreement. So, for example, you write that, in an email to Mr. Acosta, *you* "confirmed that 'there were significant irregularities with the deferred prosecution agreement,'" and that "Mr. Acosta agreed to many of our objections and adopted several of our modifications . . . [and] [t]his fact confirms both the good-faith nature of our objections and that neither Mr. Epstein nor his counsel could be considered to have violated the NPA by raising those objections in the first place." Neither your e-mails nor Mr. Acosta's consistent attempts to maintain a good working relationship with you act as modifications to the NPA or indications that the Office agreed or acquiesced to your positions.

While your letter provides great detail regarding all of the objections that you raised[1]

[1]In an effort to terminate the endless "battle of letters" that this case has become, I have elected not to detail each and every misstatement in your ten-page letter, but please do not mistake that for an agreement with those misstatements. One of those misstatements, however, begs for correction. You write: "Indeed, due to a concern we had raised, your Office specifically modified the procedure to select an attorney representative and delegated that task to Judge [redacted]. Again, the

throughout the nine-month delay between the signing of the NPA and Mr. Epstein's commencement of performance, you neglect to mention that all of your objections were soundly rejected at each and every level of review, from West Palm Beach, to Miami, to the Child Exploitation and Obscenity Section, and, finally, to the highest levels of review at the Department of Justice. As Senior Associate Deputy Attorney General John Roth stated:

> Even if we were to substitute our judgment for that of the U.S. Attorney, we believe that federal prosecution of this case is appropriate. Moreover, having reviewed your allegations of prosecutorial misconduct, and the facts underlying them, we see nothing in the conduct of the U.S. Attorney's Office that gives us any reason to alter our opinion.

With regard to your proposal to engage in additional discussions regarding the scope of the NPA, we respectfully decline. A great deal of time and effort went into the negotiation and signing of the NPA, and the Agreement speaks for itself. Contrary to your assertion, both the government and the victims have suffered harm and prejudice due to the willful breaches of the NPA by Mr. Epstein. The Office will continue to evaluate its position and will proceed accordingly.

Sincerely,

Jeffrey H. Sloman
Acting United States Attorney

By: *s/A.* [redacted]
A. [redacted] Villafaña
Assistant United States Attorney

cc: [redacted], Chief, Northern Division
Jack Goldberger, Esq.
Roy Black, Esq.

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fact that your Office accommodated our concerns validated their legitimacy . . ." As you have been told repeatedly, the decision to delegate that task to a Special Master was made independently and before any of Mr. Epstein's attorneys voiced a concern about that process. Mr. Lefkowitz, you were provided with a list of potential attorney representatives and with information in writing regarding the alleged "conflict of interest," and you made the selection that you later claimed was problematic. Notwithstanding your agreement on the selection of the attorney-representative, our Office, independently, elected to ask an independent third party to make the final decision.

BURMAN, CRITTON, LUTTIER
& COLEMAN LLP

A LIMITED LIABILITY PARTNERSHIP

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GREGORY W. COLEMAN, P.A.
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PARALEGALS

RITA H. BUDNYK
OF COUNSEL

July 8, 2009

**SENT BY FEDERAL EXPRESS**
[redacted], Esq.
Assistant U.S. Attorney
Southern District of Florida
500 East Broward Boulevard, 7th Floor
Ft. Lauderdale, FL 33394

Re: [redacted] **Doe No. 8 [redacted]. Jeffrey Epstein**
**Case No. 09-CV-80802-Marra/Johnson**

Dear Ms. [redacted]:

As you are aware, I am Mr. Epstein's attorney in the civil cases that have been filed against him. While I am certainly familiar with the NPA, it is clear to me that my interpretation of it may differ from yours (USAO) or one of the many plaintiffs' attorneys as it relates to what I can do or assert in defense of Mr. Epstein.

As I expressed to Judge Marra, my charge from Mr. Epstein is to take no action that could reasonably be considered to be a violation of the NPA. With that in mind, I am sending our motion to dismiss in [redacted] Doe #8, along with a copy of her complaint.

While I know you expressed to Mr. Lefkowitz that you (USAO) were not inclined to review pleadings and offer advisory opinions, I would ask that you reconsider and review our motion.

The Plaintiff [redacted] Doe No. 8 is not exclusively asserting a claim pursuant to 18 [redacted]. §2255, and thus, the terms of the NPA are not implicated. In fact, [redacted] Doe No. 8's counsel, Adam Horowitz, who also is counsel for Plaintiffs [redacted] Does Nos. 2 through 7 in other civil actions against Mr. Epstein, in the June 12, 2009 hearing before U.S. District Judge Kenneth Marra (at which you were also present) conceded that –

> The provision (of the NPA) relating to Mr. Epstein being unable to contest liability pertains only to those plaintiffs who have chosen as their sole remedy

the federal statute. My clients, [redacted] Doe 2 through 7, have elected to bring additional causes of action, and it's for that reason we were silent when you said does anyone here find Mr. Epstein to be in breach of the non-prosecution agreement. This provision, as we understand it, it does not relate to our clients.

June 12, 2009, Transcript of hearing in [redacted] Doe, et al [redacted]. Epstein, Case No. 08-80119-Civ-Marra, U.S. District Ct., S.D. Fla., p. 29, line 19-25, p. 30, line 1. A copy of the relevant portions of the hearing transcript is enclosed.

I agree with his comments as they relate to all of his clients, including [redacted] Doe 8. I believe that nothing in this motion involves any aspect of the NPA. If you disagree, would you please contact me as soon as possible. I must file this motion by July 14th as per my extension agreement with Mr. Horowitz. However, I stand ready to have a discussion or meeting with you regarding this motion or any other civil related pleadings or matter that may implicate the NPA. I look forward to your response.

Cordially yours,

Robert D. Critton, Jr.

RDC/clz

cc by pdf:

Jack A. Goldberger, Esq.
Martin G. Weinberg, Esq.
Roy Black, Esq.
Jay Lefkowitz, Esq.

**UNITED STATES DISTRICT COURT**
**SOUTHERN DISTRICT OF FLORIDA**

**CASE NO.: 09-CV-80802-MARRA-JOHNSON**

[redacted] DOE NO. 8

Plaintiff,

[redacted].

JEFFREY EPSTEIN,

Defendant.
_____/

**DEFENDANT EPSTEIN'S MOTION TO DISMISS PLAINTIFF'S COMPLAINT**

Defendant, JEFFREY EPSTEIN ("Epstein"), by and through his attorneys, moves to dismiss Counts I and III of Plaintiff's Complaint as the causes of action are barred by the applicable statute of limitations.[1] Rule 12(b)(6); Local Gen. Rule 7.1 (S.D. Fla. 2009). In support of dismissal, Defendant states:

Plaintiff's Complaint attempts to allege three Counts; the first two counts are pursuant to state common law, and the third count is brought pursuant to 18 [redacted]. §2255. *Civil remedy for personal injuries.* Count I attempts to allege a cause of action for "Sexual Assault and Battery," Count II for "Intentional Infliction of Emotional Distress;" and Count III for "Coercion and Enticement to Sexual Activity in Violation of 18 [redacted]. §2422," pursuant to 18 [redacted]. §2255.

[1] Plaintiff's Complaint attempts to assert both state common law claims and a claim pursuant to 18 [redacted]. §2255. Since [redacted] Doe 8 did not relinquish her state claims and correspondingly did not file her complaint relying, exclusively, on 18 USC 2255, she is not entitled to the litigation benefits including certain waivers that directly or indirectly accrue to other civil plaintiffs from the defendant's fulfilling obligations resulting from his separate confidential agreement with the United Staes Attorney's Office. Plaintiff's counsel conceded that the provisions of the NPA are not implicated where a plaintiff brings additional causes of action and does not proceed exclusively under §2255. See June 12, 2009, Hearing Transcript in [redacted] Doe, et al [redacted]. Epstein, Case No. 08-80119-Civ-Marra, p. 29, line 19-25, p. 30, line 1.

Pursuant to the allegations on the face of Plaintiff's complaint, Count I, based on Florida's common law of assault and battery, and Count III, brought pursuant to 18 [redacted]. §2255, are barred by the applicable statute of limitations. Although a statute of limitations bar to a claim is an affirmative defense, and a plaintiff is not required to negate an affirmative defense in her complaint, a Rule 12(b)(6) dismissal on statute of limitations grounds is appropriate where, as here, "it is 'apparent from the face of the complaint' that the claim is time-barred." *See generally*, La Grasta [redacted]. First Union Securities, Inc., 358 F.3d 840, 845 -846 (11th Cir. 2004).

**Count I is barred by the applicable statute of limitations.**

As to Count I, which is plead pursuant to state law, it is well settled that this Court is to apply Florida law. Erie R.Co. [redacted]. Tompkins, 58 S.Ct. 817 (1938). Pursuant to Florida law, the statute of limitations for assault and battery is four years, §95.11(3)(o)., Fla. Stat. §95.11(3)(o), Fla. Stat., provides –

> Actions other than for recovery of real property shall be commenced as follows:
> * * *
> **(3) Within four years.—**
> * * *
> (*o*) An action for assault, battery, false arrest, malicious prosecution, malicious interference, false imprisonment, or any other intentional tort, except as provided in subsections (4), (5), and (7).

In her Complaint, Plaintiff alleges in relevant part that –

> 9. ... In or about 2001, [redacted] Doe, then approximately 16 years old, fell into Epstein's trap and became one of his victims.

According to the allegations of the Complaint, [redacted] Doe had one encounter with Defendant at his Palm Beach mansion in or about 2001 when [redacted] was approximately

16 years old. See Complaint, ¶13, endnote 1 hereto.[1] Based on the allegations of the Complaint, it has been at least 8 years since the alleged conduct by EPSTEIN, well past the four year statute of limitations, thus requiring dismissal of Count I. Based on the allegations, Plaintiff is now at least 24 years old.

Subsections (4) and (5) referenced in §95.11(3)(o) are not applicable. Plaintiff may attempt to argue that subsection (7) of §95.11, Fla. Stat. applies. See endnote 2 hereto for statutory text of subsection (7), including statutes referenced therein.[2] However, a review of Plaintiff's allegations in Count I establish that Plaintiff is attempting to assert a cause of action based on the elements of Florida's common law assault and battery to which a four year statute of limitation applies. (Compare Count II, ¶24, wherein Plaintiff tracks the language §39.01(2), Fla. Stat. (2001), pertaining to "abuse.").

Pursuant to Florida law, although the term "assault and battery" is most commonly referred to as if it were a legal unit, or a single concept, "assault and battery are separate and distinct legal concepts, assault being the beginning of an act which, if consummated, constitutes battery." 3A Fla.Jur.2d *Assault* §1. An assault and battery are intentional acts. See generally, Spivey [redacted]. Battaglia, 258 So.2d 815 (Fla. 1972); and Travelers Indem. Co. [redacted]. PCR, Inc., 889 So.2d 779 (Fla. 2004).

On the face of the Complaint, the applicable four year statute of limitations has expired, and accordingly, Count I is barred an required to be dismissed.

**Count III – 18 [redacted]. §2255**

As to the applicable statute of limitations for Count III which is brought pursuant to 18 [redacted]. §2255, §2255(b), (both the 2001 version, which Defendant asserts is the applicable statute, and the amended version, effective July 27, 2006), provides:

> (b) **Statute of limitations**.—Any action commenced under this section shall be barred unless the complaint is filed within six years after the right of action first accrues or in the case of a person under a legal disability, not later than three years after the disability.

As noted above, according to the allegations of the Complaint, [redacted] Doe had one encounter with Defendant at his Palm Beach mansion in or about 2001 when [redacted] was approximately 16 years old. See Complaint, ¶13, endnote 1 hereto. Based on the allegations of the Complaint, it has been at least 8 years since the alleged conduct by EPSTEIN, well past the six year statute of limitations, thus requiring dismissal of Count III. Based on the allegations, Plaintiff is now at least 24 years old, well pass the age of majority. (The age of majority under both federal and state law is 18 years old. See 18 [redacted]. §2256(1), defining a "minor" as "any person under the age of eighteen years;" and §1.01, *Definitions,* Fla. Stat., defining "minor" to include "any person who has not attained the age of 18 years."). Thus, on the face of the Complaint, Count III is timed barred and required to be dismissed.

**Conclusion**

Accordingly, Counts I and III of Plaintiff's Complaint are subject to dismissal. On the face of the Complaint, the causes of action which Plaintiff attempts to allege are barred by the applicable statute of limitations of 4 and 6 years, respectively.

WHEREFORE, Defendant requests that this Court dismiss Counts I and III of Plaintiff's Complaint with prejudice.

**Certificate of Service**

I HEREBY CERTIFY that a true copy of the foregoing was electronically filed with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record identified on the following Service List in the manner specified by CM/ECF on this ____day of _____, 2009:

Stuart S. Mermelstein, Esq.
Adam D. Horowitz, Esq.
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305-931-2200
Fax: 305-931-0877
ahorowitz@hermanlaw.com
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*Counsel for Plaintiff [redacted] Doe #8*

Jack Alan Goldberger, Esq.
Atterbury Goldberger & Weiss, P.A.
250 Australian Avenue South
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West Palm Beach, FL 33401-5012
561-659-8300
Fax: 561-835-8691
jagesq@bellsouth.net
*Counsel for Defendant Jeffrey Epstein*

Respectfully submitted,

**BURMAN, CRITTON, LUTTIER & COLEMAN, LLP**
515 N. Flagler Drive, Suite 400
West Palm Beach, FL 33401
(561) 842-2820

By: _____
Robert D. Critton, Jr.
Florida Bar #224162
Michael J. Pike
Florida Bar #617296
*Counsel for Defendant Jeffrey Epstein*
rcrit@bclclaw.com
mpike@bclclaw.com

---

[1] Complaint, ¶13 alleges in relevant part –

> ... [redacted] Doe was recruited by another girl, who told her that she could make some money, but did not tell her what was involved. At all relevant times, the girl who recruited [redacted] Doe was acting on behalf of and as an agent for Epstein. [redacted] was

contacted by this girl by telephone. [redacted] was then picked up and brought to Epstein's mansion in Palm Beach. Once there, she was lead up a flight of stairs to the room with the massage table. Epstein came into the room and directed [redacted] to remove her clothes and give him a massage. [redacted] was frightened and felt trapped. As directed by Epstein, [redacted] removed her clothes. Epstein then during the massage touched [redacted] on her breasts and vagina, and he grabbed her hand and placed it on his penis. Epstein masturbated himself during the massage. Epstein then left money for [redacted].

[2] **§95.11(7), Fla. Stat.** –

**(7) For intentional torts based on abuse.--**An action founded on alleged abuse, as defined in s. 39.01, s. 415.102, or s. 984.03, or incest, as defined in s. 826.04, may be commenced at any time within 7 years after the age of majority, or within 4 years after the injured person leaves the dependency of the abuser, or within 4 years from the time of discovery by the injured party of both the injury and the causal relationship between the injury and the abuse, whichever occurs later.

**§39.01(2), Fla. Stat. (2001)** –

(2) "Abuse" means any willful act or threatened act that results in any physical, mental, or sexual injury or harm that causes or is likely to cause the child's physical, mental, or emotional health to be significantly impaired. Abuse of a child includes acts or omissions. Corporal discipline of a child by a parent or legal custodian for disciplinary purposes does not in itself constitute abuse when it does not result in harm to the child.

**§415.102(1), Fla. Stat. (2001)** –

(1) "Abuse" means any willful act or threatened act that causes or is likely to cause significant impairment to a vulnerable adult's physical, mental, or emotional health. Abuse includes acts and omissions.

**§984.03 (2), Fla. Stat. (2001)** –

"Abuse" means any willful act that results in any physical, mental, or sexual injury that causes or is likely to cause the child's physical, mental, or emotional health to be significantly impaired. Corporal discipline of a child by a parent or guardian for disciplinary purposes does not in itself constitute abuse when it does not result in harm to the child as defined in s. 39.01.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 09-CV-80802-Marra-Johnson

[redacted] DOE NO. 8,

Plaintiff,

vs.

JEFFREY EPSTEIN,

Defendant.
_____/

FILED by VT [redacted] D.C.
ELECTRONIC
May 28, 2009
STEVEN M. LARIMORE
CLERK U.S. DIST. CT.
S.D. OF FLA. - MIAMI

**COMPLAINT**

Plaintiff, Jane Doe No. 8 ("Jane" or "[redacted] Doe"), brings this Complaint against Jeffrey Epstein, as follows:

**Parties, Jurisdiction and Venue**

1. Jane Doe No. 8 ("Jane Doe") is a citizen and resident of the State of Florida, and is sui juris.

2. This Complaint is brought under a fictitious name to protect the identity of the Plaintiff because this Complaint makes sensitive allegations of sexual assault and abuse upon a minor.

3. Defendant Jeffrey Epstein is a citizen and resident of the State of New York, and presently serving a prison sentence in Palm Beach County, Florida for, inter alia, solicitation of prostitution and solicitation of minors to engage in prostitution. .

4. This is an action for damages in excess of $50 million.

5. This Court has jurisdiction of this action and the claims set forth herein pursuant to 28 [redacted]. §1332(a), as the matter in controversy (i) exceeds $75,000, exclusive of interest and costs;



faxed 7/07/09 JE-16

and (ii) is between citizens of different states.

6. Additionally, this Court has jurisdiction pursuant to 28 [redacted]. §1331 because Plaintiff alleges a claim under the laws of the United States. This Court has supplemental jurisdiction pursuant to 28 [redacted]. §1367(a) over all other claims set forth herein which form part of the same case or controversy.

7. This Court has venue of this action pursuant to 28 [redacted]. §§1391(a) and 1391(b) as a substantial part of the events or omissions giving rise to the claim occurred in this District.

**Factual Allegations**

8. At all relevant times, Defendant Jeffrey Epstein ("Epstein") was an adult male in his early 50's. Epstein is a financier and money manager with a secret clientele limited exclusively to billionaires. He is himself a man of tremendous wealth, power and influence. He maintains his principal home in New York and also owns residences in New Mexico, St. Thomas and Palm Beach, FL. The allegations herein concern Epstein's conduct while at his lavish estate in Palm Beach.

9. Upon information and belief, Epstein has a sexual preference and obsession for underage minor girls. He engaged in a plan and scheme in which he gained access to primarily economically disadvantaged minor girls in his home, sexually assaulted these girls, and then gave them money. In or about 2001, Jane Doe, then approximately 16 years old, fell into Epstein's trap and became one of his victims.

10. Upon information and belief, Jeffrey Epstein carried out his scheme and assaulted girls in Florida, New York and on his private island, known as Little St. James, in St. Thomas.

11. Epstein's scheme involved the use of young girls to recruit underage girls. These underage girls were recruited ostensibly to give a wealthy man a massage for monetary compensation

in his Palm Beach mansion. Epstein, upon information and belief, generally sought out economically disadvantaged underage girls from Palm Beach County who would be enticed by the money being offered - generally $200 to $300 per "massage" session - and who were perceived as less likely to complain to authorities or have credibility if allegations of improper conduct were made.

12. Epstein's plan and scheme reflected a particular pattern and method. The underage victim would be brought or directed to Epstein's mansion, where she would be led up a flight of stairs to a room that contained a massage table in addition to other furnishings. The girl would then find herself alone in the room with Epstein, who would be wearing only a towel. He would then remove his towel and lie naked on the massage table, and direct the girl to remove her clothes. Epstein would then perform one or more lewd, lascivious and sexual acts.

13. Consistent with the foregoing plan and scheme, [redacted] Doe was recruited by another girl, who told her that she could make some money, but did not tell her what was involved. At all relevant times, the girl who recruited [redacted] Doe was acting on behalf of and as agent for Epstein. [redacted] was contacted by this girl by telephone. [redacted] was then picked up and brought to Epstein's mansion in Palm Beach. Once there, she was led up the flight of stairs to the room with the massage table. Epstein came into the room and directed [redacted] to remove her clothes and give him a massage. [redacted] was frightened and felt trapped. As directed by Epstein, [redacted] removed her clothes. Epstein then during the massage touched [redacted] on her breasts and vagina, and he grabbed her hand and placed it on his penis. Epstein masturbated himself during the massage. Epstein then left money for [redacted].

14. As a result of this encounter with Epstein, [redacted] experienced confusion, shame, humiliation and embarrassment, and has suffered severe psychological and emotional injuries.

24. Epstein committed willful acts of child sexual abuse on [redacted] Doe. These acts resulted in mental or sexual injury that caused or were likely to cause [redacted] Doe's mental or emotional health to be significantly impaired.

25. Epstein's conduct caused severe emotional distress to [redacted] Doe. Epstein knew or had reason to know that his intentional and outrageous conduct would cause emotional distress and damage to [redacted] Doe, or Epstein acted with reckless disregard of the high probability of causing severe emotional distress to [redacted] Doe.

26. As a direct and proximate result of Epstein's intentional or reckless conduct, [redacted] Doe has suffered and will continue to suffer severe mental anguish and pain, psychological and emotional injuries and los of enjoyment of life. .

WHEREFORE, Plaintiff [redacted] Doe No. 6 demands judgment against Defendant Jeffrey Epstein for compensatory damages, costs, punitive damages, and such other and further relief as this Court deems just and proper.

**COUNT III**

**Coercion and Enticement to Sexual Activity in Violation of 18 [redacted]. §2422**

27. Plaintiff [redacted] Doe repeats and realleges paragraphs 1 through 14 above.

28. Epstein used a facility or means of interstate commerce to knowingly persuade, induce or entice [redacted] Doe, when she was under the age of 18 years, to engage in prostitution or sexual activity for which any person can be charged with a criminal offense.

29. On June 30, 2008, Epstein entered a plea of guilty to violations of Florida §§ 796.07 and 796.03, in the 15th Judicial Circuit in and for Palm Beach County (Case nos. 2008-cf-009381AXXXMB and 2006-cf-009454AXXXMB), for conduct involving the same plan and scheme as alleged herein.

30. As to Plaintiff J[redacted] Doe, Epstein could have been charged with criminal violations of Florida Statute §796.07(2) (including subsections (c), (d), (e), (f), (g), and (h) thereof), and other criminal offenses including violations of Florida Statutes §§798.02 and 800.04 (including subsections (5), (6) and (7) thereof).

31. Epstein's acts and conduct are in violation of 18 [redacted] §2422.

32. As a result of Epstein's violation of 18 [redacted] §2422, Plaintiff has suffered personal injury, including mental, psychological and emotional damages.

33. Plaintiff hired Mermelstein & Horowitz, P.A. (f/k/a Herman & Mermelstein, P.A.), in this matter and agreed to pay them a reasonable attorneys' fee.

WHEREFORE, Plaintiff J[redacted] Doe No. 6 demands judgment against Defendant Jeffrey Epstein for all damages available under 18 [redacted] §2255(a), including without limitation, actual and compensatory damages, costs of suit, and attorneys' fees, and such other and further relief as this Court deems just and proper.

**JURY TRIAL DEMAND**

Plaintiff demands a jury trial in this action on all claims so triable.

Dated: May 27, 2009

Respectfully submitted,

By: _____

Stuart S. Mermelstein (FL Bar No. 947245)
ssm@sexabuseattorney.com
Adam D. Horowitz (FL Bar No. 376980)
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MERMELSTEIN & HOROWITZ, P.A.
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION
CASE NO. 08-80119-CIV-MARRA

[redacted] DOE, et al.,

Plaintiffs,

vs.

JEFFREY EPSTEIN,

Defendant.

WEST PALM BEACH, FLORIDA

JUNE 12, 2009

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 305.931.2200
For [redacted] Doe

BRADLEY J. EDWARDS, ESQ.
Rothstein Rosenfeldt Adler
401 East Las Olas Boulevard
Fort Lauderdale, FL 33301
[redacted] Doe 3, 4, 5, 6, 7
954.522.3456

IŚIDRO M. GARCIA, ESQ.
Garcia Elkins Boehringer
224 Datura Avenue
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[redacted] DOE II 561.832.8033

RICHARD H. WILLITS, ESQ.
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Lake Worth, FL 33461
For [redacted]. 561.582.7600

ROBERT [redacted]. JOSEFSBERG, ESQ.
Podhurst Orseck Josefsberg
25 West Flagler Street
Miami, FL 33130
For [redacted] Doe 101 305.358.2800
(Via telephone)
KATHERINE W. EZELL, ESQ.
Podhurst Orseck Josefsberg
25 West Flagler Street
Miami, FL 33130
For [redacted] Doe 101 305.358.2800

FOR THE DEFENDANT:

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MICHAEL BURMAN, ESQ.
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561.842.2820

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[redacted], ESQ.
Assistant U.S. Attorney
500 East Broward Boulevard
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For U.S.A. 954.356.7255

MARTIN G. WEINBERG, ESQ.
20 Park Plaza
Boston MA 02116
(Via telephone) 617.227.3700
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 305.523.5290

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

May I have counsel state their appearances?

MR. HOROWITZ: Adam Horowitz, counsel for plaintiffs [redacted] 2 through [redacted] Doe 7.

THE COURT: Good morning.

MR. EDWARDS: Brad Edwards, counsel for plaintiff [redacted] Doe.

THE COURT: Good morning.

MR. GARCIA: Good morning, Your Honor. Sid Garcia for [redacted] Doe II.

THE COURT: Good morning.

MR. WILLITS: Good morning, Your Honor. Richard Willits, here on behalf of the plaintiff [redacted]..

THE COURT: Good morning.

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

THE COURT: Mr. Josefsberg, are you there?

MR. JOSEFSBERG: I am, Your Honor.

THE COURT: Good morning.

MR. JOSEFSBERG: Good morning.

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

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

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

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

MR. GARCIA: Absolutely not.

THE COURT: Anyone else for the plaintiffs?

MR. HOROWITZ: Judge, Adam Horowitz, counsel for plaintiffs [redacted] Doe 2 through 7.

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

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

it, it doesn't relate to our clients.

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

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

THE COURT: Thank you.

Anyone else have anything to say from the plaintiffs?

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

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

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

LEOPOLD-KUVIN
CONSUMER JUSTICE ATTORNEYS

July 31, 2009

[redacted]
Assistant U.S. Attorney
Southern District of Florida
500 E. Broward Blvd, 7th Floor
Ft. Lauderdale, FL 33394

**Re: B.B. [redacted] JEFFREY EPSTEIN**
**OUR FILE NO.: 080303**

Dear Ms. [redacted]

I am following up on my letter of July 6, 2009, regarding the non-prosecution agreement between the U.S. Attorneys office and Jeffrey Epstein.

Please advise whether or not this document will be produced.

Sincerely,

SPENCER T. KUVIN

STK/mlb

**U.S. Department of Justice**

*United States Attorney*
*Southern District of Florida*

*500 South Australian Ave., Suite 400*
*West Palm Beach, FL 33401*
*(561) 820-8711*
*Facsimile: (561) 820-8777*

August 4, 2009

VIA ELECTRONIC MAIL
Spencer T. Kuvin, Esq.
Leopold~Kuvin, P.A.
2925 PGA Boulevard
Suite 200
Palm Beach Gardens, FL 33410

Re: Jeffrey Epstein/B.B. – Requested Disclosure of Non-Prosecution Agreement

Dear Mr. Kuvin:

Thank you for your letter regarding the disclosure of the Non-Prosecution Agreement signed by Jeffrey Epstein. I understand that you are asking for a copy of that Agreement in connection with your representation of "B.B." As you are aware, the Agreement contains a confidentiality provision. Based upon a lawsuit filed by some of Mr. Epstein's victims, U.S. District Judge Kenneth Marra has issued a Protective Order requiring the U.S. Attorney's Office to provide copies of the Agreement to certain individuals under certain circumstances. The Order states:

> If any individuals who have been identified by the USAO [U.S. Attorney's Office] as victims of Epstein and/or any attorney(s) for those individuals request the opportunity to review the Agreement, then the USAO shall produce the Agreement to those individuals, so long as those individuals also agree that they shall not disclose the Agreement or its terms to any third party absent further court order, following notice to and an opportunity for Epstein's counsel to be heard . . .

(Court File No. 08-CV-80737-MARRA, DE 26, ¶ (e).)

The language "individuals who have been identified by the USAO as victims of Epstein" refers to a specific list of individuals who were the subject of the federal investigation. A list of those individuals was provided to Mr. Epstein's attorney. Your client, B.B., was not identified during that investigation, and, therefore was not on the list. By stating this I am not, in any way, denigrating any harm that your client may have suffered. I am simply stating that, given time and resource limitations that we faced during the investigation, B.B. was not a person who was positively identified, such that she would have been the subject of charges within a

possible federal indictment.

For this reason, your client is not covered by the Court's Protective Order and the Agreement's confidentiality provision remains intact. If you are unable to get a copy of the Agreement via the civil discovery process in the lawsuit that you have filed against Mr. Epstein, please ask his counsel if they will consent to my production of the Agreement to you and I will send a copy to you.

Sincerely,

Jeffrey H. Sloman
Acting United States Attorney

By: */s/ A. Marie Villafaña*
A. [redacted]
Assistant U.S. Attorney

cc: [redacted], Esq.

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

BLACK
SREBNICK
KORNSPAN
STUMPF
P.A.

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

RE: Jeffrey Epstein

Dear Jeff:

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

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,

Roy Black

RB/wg

**U.S. Department of Justice**

*United States Attorney*
*Southern District of Florida*

*500 S. Australian Ave, Ste 400*
*West Palm Beach, FL 33401*
*(561) 820-8711*
*Facsimile: (561) 820-8777*

September 18, 2009

DELIVERY BY ELECTRONIC MAIL
Roy Black, Esq.
Black Srebnick Kornspan & Stumpf P.A.
201 S. Biscayne Blvd, Suite 1300
Miami, FL 33131

Re: Jeffrey Epstein

Dear Roy:

I write in response to your letter to Mr. Sloman regarding the transfer of supervision of Mr. Epstein's community control to the Virgin Islands. I requested from Mr. Goldberger a copy of the documentation that Mr. Epstein submitted in support of his request and a copy of the interstate compact that you had mentioned. I have not received these documents. Rather than wait any longer, I am advising you of our Office's preliminary concerns. The Office may have additional concerns upon receipt of the requested items.

The Non-Prosecution Agreement called for Mr. Epstein to serve eighteen months in county jail followed by twelve months of community control. Mr. Epstein's eighteen-month jail term was reduced to slightly more than twelve months based upon Mr. Epstein's "work release" of more than twelve hours per day, seven days per week. Mr. Epstein has been on community control for less than two months and he is already asking that he be allowed to transfer his supervision. The request comes on the heels of an instance where Mr. Epstein was found by the Palm Beach Police Department walking on the beach. I understand that he told the police that he was "walking to work," despite the fact that his "office" was more than eight miles away, and the beach where he was found was not *en route* from his residence to his workplace.

Throughout the negotiation of the NPA, representations were repeatedly made by you and your colleagues that Mr. Epstein would serve his complete sentence, including community control, in Palm Beach County. During his change of plea and sentencing, Mr.

Epstein told the Court that he intended to remain in Palm Beach County during his period of community control – a fact that was important to Judge Pucillo in making her decision whether or not to accept the plea agreement. Mr. Epstein's presence in Palm Beach County was important to the Court, our Office, and, presumably, the State Attorney's Office, because it allowed all of these entities to monitor Mr. Epstein's performance of his obligations. Relocating to the Virgin Islands, where Mr. Epstein lives on a private island without any independent law enforcement presence, would eliminate that ability.

The Office's ability to determine whether Mr. Epstein has breached the NPA and to file charges against him when/if he breaches that Agreement was a key piece of consideration for the decision to enter that Agreement. Another key piece was the ability of victims to pursue claims against Mr. Epstein under 18 [redacted]. § 2255.

Your September 1, 2009 letter to Mr. Sloman, in essence, asked whether it would be the Office's position that Mr. Epstein's move to his private island would violate the terms of the NPA. For the reasons stated above, even upon our preliminary review, it is the position of the Office that the transfer of community control would frustrate the purpose of the agreement and thereby violate its terms. No final decision has been made, of course, because Mr. Epstein has not yet moved. However, if Mr. Epstein elects to go forward with the transfer of community control with the knowledge of the Office's objection, that will be considered, along with all of the previous violations by Mr. Epstein, as set forth in my letters of June 15 and July 7, 2009, in determining the Office's final course of action.

I look forward to receiving the materials requested from Mr. Goldberger.

Sincerely,

Jeffrey H. Sloman
Acting United States Attorney

By: *A.* [redacted]
A. [redacted]
Assistant United States Attorney

cc: [redacted], Chief, Northern Division

LEOPOLD-KUVIN, PA
CONSUMER JUSTICE ATTORNEYS

January 4, 2010

[redacted]
Assistant U.S. Attorney
Southern District of Florida
500 E. Broward Blvd, 7th Floor
Ft. Lauderdale, FL 33394

**Re: B.B. [redacted]. JEFFREY EPSTEIN**
**OUR FILE NO.: 080303**

Dear Ms. [redacted]:

After taking the deposition of Police Chief, Michael Reiter, it came to our attention that apparently a computer which was initially seized during the search warrant conducted on Mr. Epstein's home was returned by the FBI to a private investigator employed by Mr. Epstein. We would like to determine who this computer was returned to, and when it was returned. It would assist us greatly if you could check your records to determine when, and if, this was ever done. Additionally, according to the sworn testimony of Chief Reiter, his department was provided with a letter containing a list of potential victims of Mr. Epstein. This letter contained language pursuant to a previously unknown Federal Statute which apparently directed him to destroy the letter after reading it. We hereby request that your office advise what Statute or Code that letter was referring to. Finally, we would like to schedule the depositions of FBI Special Agents Nesbitt Kirkendall, Junior Ortiz and Mr. Solomon. Please let me know who we need to direct our subpoenas to in order to schedule these depositions.

I appreciate your immediate attention to this matter. Should you have any additional questions about these issues, please do not hesitate to contact me at once.

Sincerely,

SPENCER T. KUVIN

STK:mlb

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

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NOAH FOX

E-Mail: *RBlack@RoyBlack.com*

January 20, 2010

[redacted], Esq.
Assistant United States Attorney
United States Attorney's Office
Southern District of Florida
500 South Australian Avenue
Suite 400
West Palm Beach, Florida 33401

**RE: Jeffrey Epstein**

Dear [redacted]:

We are now facing a difficult issue about the attorney's fees in the civil cases brought against Mr. Epstein related to your prior criminal investigation. I broached this subject with you on the phone a couple of weeks ago, but I could see our discussion was not fruitful at that time. Since we could not come to any agreement on how to handle this, we must proceed ahead based on our understanding of the non-prosecution agreement.

Mr. Epstein has paid the attorney representative $526,000 and accepts his obligation under the NPA to pay additional reasonable legal fees that precede litigation claims under ¶7C of the Addendum. However we believe that the request by the attorney representative for over $1.5M additional fees is both unreasonable and outside the Addendum's criteria for payment.

Litigation may ensue since we have been unable to resolve these matters through an agreement. We never contemplated that the legal fee agreement would result in a bill for $2.1M when the Addendum was entered. We understand you and Jay had different views on whether an attorney representative could both sue Epstein for some clients and remain as counsel to settle other cases. We believe that the attorney representative could either settle the cases and be paid hourly or litigate and be paid out of the judgment, but not both. The language of the NPA is in need of legal construction regarding whether Epstein's obligations end when

the attorney representative brings a lawsuit for any of his clients - a matter that a court should settle free from any consideration that initiating litigation to resolve this outstanding issue would be perceived as a breach.

Just to be sure, Mr. Epstein will pay whatever fees a court determines are owed and we only want assurance that litigating the legal and factual issues over such liability will be consistent with and not violate the NPA. We don't think it is the government's position that Epstein must simply pay any bill he receives, regardless of the amount and type of work done, particularly one for $2.1M. So we have no alternative but to go to court to resolve this issue. We are sending you this letter because the attorney representative is using the threat of a breach as leverage to get his fees. I don't believe the government's power to indict and incarcerate should be used to assist a private lawyer in collecting an exorbitant legal fee. Thus we are putting you on notice, and asking that if you disagree with our legal opinion that a suit is not in conflict with the NPA, to tell us without delay.

Cordially yours,

Martin G. Weinberg, Esq.
Robert D. Critton, Jr.
Roy Black, Esq.

By: _____
Roy Black

MW:RC:RB/wg

[redacted], [redacted]. (USAFLS)

**From:** Roy BLACK [redacted]
**Sent:** Thursday, January 21, 2010 2:59 PM
**To:** [redacted]. (USAFLS)
**Cc:** owlmgw@worldnet.att.net
**Subject:** Yesterday's Letter

Dear [redacted]: On second thought my letter yesterday went too far in one respect. So that there is no misunderstanding of the last paragraph of yesterday's letter, our concern is not that the attorney representative in fact has used the threat of a breach as leverage to get his fees, only that there exists the legitimate concern that the agreement could be so used and the reality that any concern about such use significantly and unfairly burdens Mr Epstein's right to resort to the courts to resolve outstanding legal issues regarding the criteria for payment and the amount of payment owed. I hope this clarifies our concern in this one area. Thanks Roy

**U.S. Department of Justice**

*United States Attorney*
*Southern District of Florida*

*500 S. Australian Ave, Ste 400*
*West Palm Beach, FL 33401*
*(561) 820-8711*
*Facsimile: (561) 820-8777*

February 11, 2010

DELIVERY BY ELECTRONIC MAIL
Roy Black, Esq.
Black Srebnick Kornspan & Stumpf P.A.
201 S. Biscayne Blvd, Suite 1300
Miami, FL 33131

Re: Jeffrey Epstein

Dear Mr. Black:

Thank you for meeting with our Office last week. During our discussion, you and your colleagues raised three issues: (1) whether our Office would consider it a breach of the Non-Prosecution Agreement for Mr. Epstein to file suit against the victim's attorney-representative relating to the amount of attorney's fees; (2) whether our Office would consider it a breach of the Non-Prosecution Agreement for Mr. Epstein to argue that he has no liability for claims raised exclusively under 18 [redacted]. § 2255 as to any of the victims on the identified list; and (3) whether our Office would have any objection to Mr. Epstein applying for early termination of his community control.

As we have told you before, our Office cannot give advisory opinions as to what will and will not be a breach of the Non-Prosecution Agreement. Furthermore, as to the first item, your colleagues admitted that efforts to reach an agreement with Robert Josefsberg regarding the amount of fees owed have not been completed. Similarly, as to the second item, your colleagues admitted that there are no currently pending cases arising exclusively under 18 [redacted]. § 2255 as to any of the victims on the identified list. Given that these matters may never arise and, if they do arise, there will be innumerable legal and factual issues that have not been shared with our Office, we again decline to provide any advisory opinions. As discussed during the meeting, the purpose of having the parties and a Special Master involved at the beginning of the process in the selection of the attorney-representative was to avoid dealing with this issue at the end of the process. As with all matters related to the Agreement, we expect that Mr. Epstein will act in good faith and comply with the letter and spirit of the NPA.

As to the third item, we have reviewed your letter to Mr. Sloman of February 8, 2010. While Mr. Acosta did state in his letter of December 19, 2007, that he did not believe that the Office was

obligated to notify the victims identified through the federal investigation of proceedings occurring in state court, the U.S. Department of Justice's position may have changed in the interim in light of internal guidance regarding prosecutors' obligations pursuant to 18 [redacted]. § 3771, 42 [redacted]. § 10607, and Fed. R. Crim. P. 60 (effective December 1, 2008).

In light of Mr. Acosta's prior statements to Mr. Epstein's counsel that Mr. Epstein would be eligible for any benefit available to other similarly-situated state defendants, the Office agrees that Mr. Epstein may apply for early termination or modification of community control in accordance with Fl. Stat. §§ 948.05 and 948.10(4), assuming that Mr. Epstein has completed "the sanctions imposed in the community control plan." The Office takes no position regarding such an application; it is entirely within the discretion of the State Attorney's Office and the Palm Beach County Circuit Court Judge as to whether it is in "the best interests of justice and the welfare of society" to allow Mr. Epstein to terminate prematurely his community control. Mr. Epstein and his counsel may not make a representation to the State Attorney's Office, the Court, or any victim that the U.S. Attorney's Office agrees with, joins in, or does not oppose such a motion. In light of prior erroneous statements in court filings, we respectfully request that a copy of any court filing be provided to our office.

If such a motion is made, in accordance with your proposal, the U.S. Attorney's Office will notify the federal victims that the application was filed and, if a hearing is scheduled, the date, time, and location of such hearing. The communication will consist merely of a notification and will neither encourage nor discourage attendance or submission of materials related to the application.

Sincerely,

Jeffrey H. Sloman
United States Attorney

By: s/*A.* [redacted] *Villafaña*
A. [redacted]
Assistant United States Attorney

cc: Jeffrey H. Sloman, U.S. Attorney
Robert K. Senior, Acting First Assistant U.S. Attorney
[redacted], Chief, Northern Division

ROY BLACK
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NOAH FOX

E-Mail: *RBlack@RoyBlack.com*

February 18, 2010

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

RE: Jeffrey Epstein

Dear Ms [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-

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], Esq.
Robert Senior, Esq.

ROY BLACK
HOWARD M. SREBNICK
SCOTT A. KORNSPAN
LARRY A. STUMPF
MARIA NEYRA
JACKIE PERCZEK
MARK A.J. SHAPIRO
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MARCOS BEATON, JR.
MATTHEW P. O'BRIEN
JENIFER J. SOULIKIAS
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E-Mail: *RBlack@RoyBlack.com*

March 5, 2010

Jeff Sloman, Esq.
United States Attorney
99 N.E. 4th Street
Miami, FL 33132

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

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

RE: Jeffrey Epstein

Dear Counsel:

We write this letter to renew our request that the United States Attorney's Office provide us, as Mr. Epstein's counsel in the federal NPA matter, with clarity as to what legal issues we can advise his civil counsel can be litigated without causing you to consider the raising of legal issues to be in breach of Mr. Epstein's obligations under paragraph 8 of the NPA. A letter from civil counsel Robert Critton is attached. On February 11, 2010, you advised us that for reasons including the fact that at the time there were "no currently pending cases arising exclusively under 18 USC §2255 as to any of the victims on the identified list" you would "decline to provide any advisory opinions" in response to our requests during our meeting of February 3.

Since February 11, 2010, a lawsuit has been filed by the attorney representative on behalf of [redacted] Doe 103. Her identity is known by us and she is on the "identified list." Her lawsuit raises only §2255 claims. Although she has not waived her right to file any other state or federal or common law claim so as to fit squarely within the letter of ¶8 of the NPA, she does, in her lawsuit, quote ¶8 and claim rights as a beneficiary of that agreement, *see* Case No. 10-80309 (S.D. Fla.), Complaint, ¶¶25-26, thus requiring that civil counsel consider

responsive motions that relate to the scope of waiver of liability that is memorialized in the NPA. Additionally, Mr. Epstein and his counsel have scheduled a meeting to review the attorney representatives outstanding bills but have been told that if there is no settlement agreement, then the attorney representative intends to initiate litigation rather than adopt the Special Master procedure that we referred to in our February 18, 2010 correspondence to you.

It is the intention of Mr. Epstein's civil counsel to not contest that at least one predicate §2255 offense was committed believing that such a "waiver" satisfies, facially, Mr. Epstein's obligations under the NPA, see attached letter from Mr. Critton. As we said during our meeting on February 3, we have an obligation to provide advice to Mr. Epstein's civil counsel, Robert Critton, whether his raising of certain legal challenges to the Complaint will be perceived as being in conflict with Mr. Epstein's NPA obligations. These issues include:

1. Whether Mr. Epstein can contend that any waiver of liability is satisfied by his not contesting the occurrence of a single rather than multiple predicate offenses as to each claimant? This issue is pertinent since [redacted] Doe 103 has brought six separate claims for §2255 relief each implicating the statutory minimum damage recovery. Amongst the predicates alleged include a predicate offense allegation of a statute that was not even enacted until 2006, i.e., over a year after [redacted] Doe 103 turned 18, and substantially after her last alleged contact with Mr. Epstein. Any requirement that Mr. Epstein not contest liability for that predicate would violate the *ex post facto* laws. Two other predicates are not supported by trustworthy evidence. It is our contention that Mr. Epstein satisfies his NPA obligations by not contesting that he committed at least one predicate offense. Prior correspondence from your office is not inconsistent with our belief that the required scope of waiver was to a predicate offense in the singular, *see, e.g.*, Mr.Acosta's letter to Ken Starr, December 4, 2007, p.2 ("were Mr. Epstein convicted at trial, the plaintiff-victims would not have to show that **a** violation of an enumeration section of Title 18 took place")?

2. Whether Mr. Epstein can contend that the statutory provisions of §2255 in effect at the time of the offense (*e.g.*, 2004-5) govern the minimum statutory damage amount ($50,000 rather than $150,000) under *ex post facto* laws, *see* United States [redacted]. Scheidt, 2010 W.L. 144837 (E.D. Cal., 2010) (indicating that the statute in effect at the time of the violation governs the minimum damage remedy)?

3. Whether personal injury is a separate §2255 element from the predicate offense element so that Mr. Epstein could "agree" to the occurrence of a predicate pursuant to his NPA obligations but still contest that the plaintiff was injured, *see* United States [redacted]. Scheidt, *supra* (finding each to be a separate element) and the letter from Mr. Acosta to Mr. Starr, *supra* December 4, 2007 letter at p.2 which agrees that Mr. Epstein can contest the injury element under the NPA ("were Mr. Epstein convicted at trial, the plaintiff-victims in a subsequent Section 2255 suit would still have had some burden to prove that they were 'victims'")?

4. Whether the 6-year civil statute of limitations contained in 18 USC §2255 could be raised as an affirmative defense if the facts or allegations demonstrate a greater than 6-year period between the accruing of the cause of action and the complaint, i.e., whether Mr. Epstein can "agree" (for civil §2255 purposes) to the occurrence of a predicate offense and still claim it occurred greater than 6 years before the filing of a Complaint?

5. Whether Mr. Epstein can contest certain claims that are unsupported by trustworthy proof (or in certain cases by any proof at all) so long as he has waives his right to deny the occurrence of at least one predicate offense as required by ¶8 of the NPA?

6. Whether damages are to be awarded based on injury to a plaintiff or based on the number of separately proven claims, *see* United States [redacted]. Baker, 2009 WL 4572785 (E.D.Tex., 2009) where the Court rejected the contention that damages were to be allocated per violation?

We are not asking the government to adopt our legal positions; instead we are simply seeking the right for Mr. Epstein's civil counsel to raise principled good faith legal issues without fear of the irreparable collateral consequences that would result from any notice by you that you believed that a litigation position adopted by Mr. Epstein's civil counsel constituted a willful breach. Paragraph 8 and its waiver provisions are not clear (or as stated by Mr. Acosta are "far from simple," *see* Mr. Acosta letter to Ms. Sanchez, December 19, 2007). Paragraph 8 does not "speak for itself." That the provisions of ¶8 are "far from simple" is illustrated in the construction of those paragraphs by Mr. Epstein's prior counsel, Jay Lefkowitz, who repeatedly advised Mr. Acosta, by letter, that he considered the waiver of liability to be limited to those who agreed to damages, and was inapplicable to those who chose to litigate, *see, e.g.*, letters from Jay Lefkowitz to

Alex Acosta October 10, 2007, p.4 and November 29, 2007, p.2. Again, we are only requesting that you inform us whether in the event Mr. Epstein did not contest the commission of at least one predicate – the statutory precondition for the filing of a §2255 lawsuit - you would nevertheless believe that the raising of any of the legal arguments outlined above would violate the NPA

Respectfully submitted,

MARTIN WEINBERG, ESQ.
ROY BLACK, ESQ.

By _____

/wg

BURMAN, CRITTON
LUTTIER & COLEMAN, LLP
YOUR TRUSTED ADVOCATES

A LIMITED LIABILITY PARTNERSHIP

J. MICHAEL BURMAN, P.A.[1,2]
GREGORY W. COLEMAN, P.A.
ROBERT D. CRITTON, JR., P.A. [1]
BERNARD A. LEBEDEKER
MARK T. LUTTIER, P.A.
MICHAEL J. PIKE
DAVID A. YAREMA

[1]FLORIDA BOARD CERTIFIED CIVIL TRIAL LAWYER
[2]ADMITTED TO PRACTICE IN FLORIDA AND COLORADO

ADELQUI J. BENAVENTE
PARALEGAL/INVESTIGATOR
JESSICA CADWELL
BOBBIE M. MCKENNA
ASHLIE STOKEN-BARING
BETTY STOKES
PARALEGALS
RITA H. BUDNYK
OF COUNSEL
EDWARD M. RICCI
OF COUNSEL

March 4, 2010

Roy Black, Esq.
Black, Srebnick, Kornspan & Ptumpf
201 S. Biscayne Boulevard, Suite 1300
Miami, FL 33131

Martin G. Weinberg, Esq.
Martin G. Weinberg, PC
20 Park Plaza, Suite 1000
Boston, MA 02116

Re: Jeffrey Epstein

Dear Roy and Marty:

This letter represents my thoughts on issues concerning the NPA and my ability to fully defend Mr. Epstein in the civil case recently filed by Mr. Josefsberg.

Based on a State criminal court ruling last summer, the Non-Prosecution Agreement ("NPA") was made available to the public. With regard to the civil aspect of the NPA, specifically paragraphs 7 and 8 (including the Addendum), our interpretation has been substantially different from that of the attorney representative, Mr. Josefsberg, and other attorneys representing alleged victims. They have interpreted those civil portions of the agreement to assist them in their civil cases in a manner which we believe is inconsistent with both the written word and the intent of the NPA.

Mr. Epstein has continued to fulfill his responsibilities under all aspects of the NPA. Mr. Josefsberg has represented or currently represents twelve individuals. Of those twelve individuals, eleven have resolved their claims. Of those eleven claims, only two individuals filed contested litigation, [redacted] Doe 101 and [redacted] Doe 102.

Mr. Epstein and Mr. Josefsberg have attempted to resolve the issue associated with attorneys fees and costs. Mr. Epstein has, as you know, paid an excess of $500,000.00 toward the claimed outstanding fees and costs. It is the belief of all attorneys who represent Mr. Epstein that the fees and costs incurred by the attorney representative (for many attorneys and consultants) are excessive and duplicative. Mr. Epstein provided Mr. Josefsberg a signed Special Master Agreement for resolving the fees/costs issues in February 2010, in substantially the same format which was agreed upon as of December of 2009. The only significant change was use of an out-of-state special master. We were advised by Mr. Josefsberg and Mr. Podhurst that they no longer agree with using that process.

[redacted] Doe 103 now has been filed. While Mr. Epstein clearly recognizes his obligation under the NPA to waive liability to a single predicate offense, Mr. Josefsberg has filed an action asserting multiple counts against Mr. Epstein based on multiple predicate acts, including one wherein the statute was not even in effect at the time of the alleged violation. Mr. Josefsberg is also aware and agreed that Mr. Epstein could file a declaratory action related to the interpretation of the NPA. Mr. Josefsberg reserved the right to contest issues that might be raised in such an action.

It is facially unfair, unjust and inconsistent with the spirit and intent of the NPA that Mr. Epstein be precluded from fully defending himself (except for the waiver of liability as to a single act) especially where no facts exist to support the claim, a statute was not in effect at the time of the alleged incident, etc.

It is my understanding that you are sending a letter to the USAO. I have no objection to your including my letter which expresses some of my concerns with which Mr. Epstein is now confronted based on Mr. Josefsberg's interpretation of the NPA. While I am not asking the USAO to confirm Mr. Epstein and his attorneys' interpretation of the NPA and/or its spirit and intent, I would request that the USAO give Mr. Epstein the opportunity to fully defend himself, in the civil suit, except for that which is specifically required of him under the NPA.

Cordially yours,

Robert D. Critton, Jr.

RDC/clz

**U.S. Department of Justice**

*United States Attorney*
*Southern District of Florida*

*500 S. Australian Ave, Ste 400*
*West Palm Beach, FL 33401*
*(561) 820-8711*
*Facsimile: (561) 820-8777*

April 2, 2010

DELIVERY BY ELECTRONIC MAIL
Roy Black, Esq.
Black Srebnick Kornspan & Stumpf P.A.
201 S. Biscayne Blvd, Suite 1300
Miami, FL 33131

Re: Jeffrey Epstein

Dear Mr. Black:

The Office is in receipt of your letter of March 29, 2010. We have had a series of correspondence, telephone calls, and meetings regarding the issue of Mr. Epstein's obligation to his victims. We have repeatedly stated that Mr. Epstein is expected to abide by the letter and spirit of the Non-Prosecution Agreement. And we have repeatedly informed you that the U.S. Attorney's Office does not intend to provide advisory opinions to Mr. Epstein or his attorneys regarding the handling of the civil suits filed against him. Yet again, you have asked us to provide such an advisory opinion. The request relates to Mr. Epstein's Motion to Dismiss *in toto* the suit filed against him by Jane Doe 103, whom we understand is one of the victims identified through the 2006 through 2007 investigation that culminated in the signing of the Non-Prosecution Agreement.

Jane Doe 103 is represented by Robert Josefsberg, the attorney-representative selected by the Special Master in accordance with the Non-Prosecution Agreement, and the Complaint raises claims exclusively under 18 [redacted]. § 2255. As such, Mr. Epstein has waived his right to contest liability. Despite this waiver, Mr. Epstein and his attorneys want the Court to dismiss the Complaint. In a word, yes, the Office believes that this is a breach of the Non-Prosecution Agreement.

Sincerely,

Jeffrey H. Sloman
United States Attorney

By: [redacted]
Assistant United States Attorney

cc: Jeffrey H. Sloman, U.S. Attorney
Robert K. Senior, Acting First Assistant U.S. Attorney
[redacted], Chief, Northern Division

Unsealed 03/09/10
Sealed

**IN THE UNITED STATES DISTRICT COURT**
**FOR THE SOUTHERN DISTRICT OF FLORIDA**
**Civil Action No. _____**

**10-80309**

FILED by [redacted]
FEB 23 2010
STEVEN M. LARIMORE
CLERK U.S. DIST. CT.
S. D. of FLA. - MIAMI

[redacted] DOE No. 103,

Plaintiff,

[redacted]

JEFFREY EPSTEIN,

Defendant.
_____/

**COMPLAINT AND DEMAND FOR JURY TRIAL**

Plaintiff, [redacted] Doe No. 103 ("Plaintiff"), brings this Complaint against Defendant, Jeffrey Epstein ("Defendant"), and states as follows:

**PARTIES, JURISDICTION, AND VENUE**

1. At all times material to this cause of action, Plaintiff was a resident of Palm Beach County, Florida.

2. This Complaint is brought under a fictitious name to protect the identity of Plaintiff because this Complaint makes sensitive allegations of sexual assault and abuse of a then minor.

3. At all times material to this cause of action, Defendant owned a residence located at 358 El Brillo Way, Palm Beach, Palm Beach County, Florida.

4. Defendant is presently a citizen of the United States Virgin Islands. Pursuant to the plea agreement entered by the Defendant in state court and the sentencing which occurred on June 30, 2008, Defendant is currently under community control in Palm Beach County, Florida.

Sealed



EFTA00183820

5. Defendant is an adult male born on January 20, 1953.

6. This Court has jurisdiction over this action and the claims set forth herein pursuant to 18 [redacted] § 2255.

7. This Court has venue of this action pursuant to 28 [redacted] § 1391(b), as a substantial part of the events giving rise to the claim occurred in this District.

**STATEMENT OF FACTS**

8. At all relevant times, Defendant was an adult male spanning the ages of 45 and 55 years old. Defendant is known as a billionaire financier and money manager with a secret clientele limited exclusively to billionaires. He is a man of tremendous wealth, power, and influence. He owns a fleet of aircraft that includes a Gulfstream IV, a helicopter, and a Boeing 727, as well as a fleet of motor vehicles. Until his incarceration pursuant to the plea entered and sentencing, which occurred on June 30, 2008, he maintained his principal place of residence in the largest dwelling in Manhattan, a 51,000-square-foot eight-story mansion on the Upper East Side. He also owns a $6.8 million mansion in Palm Beach, Florida, a $30 million 7,500-acre ranch in New Mexico he named "Zorro," a 70-acre private island known as Little St. James in the U.S. Virgin Islands, a mansion in London's Westminster neighborhood, and another residence in the Avenue Foch area of Paris. The allegations herein concern Defendant's conduct while at his lavish residence in Palm Beach and numerous other locations both nationally and internationally.

9. Defendant has a sexual preference for underage minor girls. He engaged in a plan, scheme, or enterprise in which he gained access to countless vulnerable and relatively economically disadvantaged minor girls, and sexually assaulted, molested, and/or exploited these girls, and then gave them money.

10. Beginning in or around 1998 through in or around September 2007, Defendant used his resources and his influence over vulnerable minor girls to engage in a systematic pattern of sexually exploitative behavior.

11. Defendant's plan and scheme reflected a particular pattern and method. Defendant coerced and enticed impressionable, vulnerable, and relatively economically less fortunate minor girls to participate in various acts of sexual misconduct that he committed upon them. Defendant's scheme involved the use of underage girls, as well as other individuals, to recruit underage girls. Defendant and/or an authorized agent would call and alert Defendant's assistants shortly before or after he arrived at his Palm Beach residence. His assistants would call economically disadvantaged and underage girls from West Palm Beach and surrounding areas who would be enticed by the money being offered and who Defendant and/or his assistants perceived as less likely to complain to authorities or have credibility issues if allegations of improper conduct were made. The then minor Plaintiff and other minor girls, some as young as 14 years old, were transported to Defendant's Palm Beach mansion by Defendant's employees, agents, and/or assistants in order to provide Defendant with "massages."

12. Many of the instances of illegal sexual conduct committed by Defendant were perpetrated with the assistance, support, and facilitation of at least three assistants who helped him orchestrate this child exploitation enterprise. These assistants would arrange times for underage girls to come to Defendant's residence, transport or cause the transportation of underage girls to Defendant's residence, escort the underage girls to the massage room where Defendant would be waiting or would enter shortly thereafter, urge the underage girls to remove their clothes, deliver cash from Defendant to the underage girls and/or their procurers at the conclusion of each "massage appointment," and assist Defendant in taking nude photographs

and/or videos of the underage girls with and/or without their knowledge. Defendant would pay the procurer of each girl's "appointment" hundreds of dollars.

13. Defendant designed this scheme to secure a private place in Defendant's Palm Beach mansion where only persons employed and invited by Defendant would be present, so as to reduce the chance of detection of Defendant's sexual abuse and/or exploitation, as well as to make it more difficult for the minor girls to flee the premises and/or to credibly report his actions to law enforcement or other authorities. The girls were usually transported by his employee(s), agent(s), and/or assistant(s) and/or by taxicab(s) and/or motor vehicle(s) paid for by Defendant, which also made it difficult for the girls to flee his mansion.

14. Upon her initial arrival at Defendant's Palm Beach mansion, each underage victim would generally be introduced to one of Defendant's assistants, who would gather the girl's personal contact information. The minor girl would be led up a remote flight of stairs to a room that contained a massage table and a large shower.

15. At times, if it was the girl's first "massage" appointment, another female would be in the room to "lead the way." Generally the other female would leave, or Defendant would dismiss her. Often, Defendant would start his massage wearing only a small towel, which eventually would be removed. Defendant and/or the other female would direct the girl to massage him, giving the minor girl specific instructions as to where and how he wanted to be touched, and then direct her to remove her clothing. Defendant would then perform one or more lewd, lascivious, and sexual acts, including masturbation; fondling the minor's breasts and/or sexual organs; touching the minor's vulva, vagina, and/or anus with a vibrator, back massager, his finger(s), and/or his penis; digitally penetrating her vagina; performing intercourse, oral sex, and/or anal sex; and/or coercing or attempting to coerce the girl to engage in lewd acts and/or

prostitution and/or enticing the then minor girl to engage in sexual acts with another female in Defendant's presence. The exact degree of molestation and frequency with which the sexual exploitations took place varied and is not yet completely known; however, Defendant committed such acts regularly on a daily basis and, in most instances, several times a day. In order to facilitate the daily exchanges of money for sexual assault and abuse, Defendant kept U.S. currency readily available.

16. Defendant traveled out of Florida to Palm Beach for the purpose of luring minor girls to his mansion to sexually abuse and/or batter them. He used the telephone to contact these minor girls for the purpose of coercing them into acts of prostitution and to enable himself to commit sexual battery against them and/or acts of lewdness in their presence, and he conspired with others, including his employee(s), assistant(s), driver(s), pilot(s), and/or agent(s), to facilitate these acts and to avoid police detection. Defendant's systematic pattern of sexually exploitative behavior described above also occurred in Defendant's other domestic and/or international residences, places of lodging, and/or modes of transportation.

17. Consistent with the foregoing plan and scheme, Defendant used his money, wealth, and power to unduly and improperly manipulate and influence the then minor Plaintiff. A vulnerable young girl, Plaintiff was merely a seventeen year old high school student when she was first lured into Defendant's sexually exploitative world in or about January 2004. Plaintiff was recruited while at work by a co-worker, one of the minor victims Defendant paid to procure underage females. Plaintiff went to Defendant's Palm Beach mansion accompanied by this co-worker. Upon arriving, Plaintiff was led by one of Defendant's assistants up a flight of stairs to a spa room with a shower and a massage table. Defendant entered this room wearing only a towel. Defendant suddenly removed his towel, exposing his naked body, and then lay on the massage

table. Defendant told Plaintiff to massage his back and take off her clothing, which she refused to do. Defendant then began to try to touch the minor Plaintiff and/or take off her clothing. After Defendant's relentless pawing, she reluctantly removed some of her clothing. During this encounter, Defendant turned over on his back and fondled Plaintiff's breasts, despite her repeatedly telling him not to do so. As Plaintiff massaged Defendant, Defendant proceeded to masturbate until ejaculation. Defendant then paid Plaintiff two hundred dollars, and Plaintiff was escorted out of Defendant's mansion and left Defendant's property.

18. A similar pattern of grooming continued, and the sexual exploitation progressively escalated, over the course of approximately seventeen months during which Defendant would often travel to Palm Beach. Prior to arriving and while in Palm Beach, Defendant and/or his agent(s) would frequently call Plaintiff at her home telephone number and/or other telephone numbers, arranging for encounters with her for Defendant, sometimes twice daily. While usually such contacts were made by his assistants, Defendant personally called Plaintiff repeatedly, despite being told to leave Plaintiff alone. After the first few encounters, Defendant coerced Plaintiff to remove all her clothing, and Defendant penetrated the minor Plaintiff's vagina digitally. Defendant sexually abused and/or battered and/or exploited Plaintiff at least a hundred times between approximately January 2004 and May 2005. Such exploitation included, but was not limited to, Defendant's sexual abuse and battery of Plaintiff with vibrator(s), back massager(s), his finger(s), and his penis. At times, Defendant manipulated Plaintiff to interact sexually with another female. During one encounter, Defendant penetrated the minor Plaintiff's vagina with his penis, all the while narrating and demonstrating his sexual battery of Plaintiff to another female present in the room. While some of the precise dates that Defendant's acts of sexual exploitation occurred are unknown to Plaintiff, these dates are known

to Defendant, as he and/or his assistants kept written records, some of which are in the custody of law enforcement, of each instance in which he committed lewd acts upon minor girls, including the then minor Plaintiff.

19. Defendant's preference for underage girls was well-known to those who regularly procured them for him. The above-described acts of abuse began to occur during a time when Defendant knew that Plaintiff was a minor. Defendant, at all times material to this cause of action, knew and/or should have known of Plaintiff's age of minority. In fact, Defendant repeatedly urged the minor Plaintiff to become legally emancipated in order to accompany him as he traveled, both nationally and internationally. Additionally, Defendant, knowing that Plaintiff was merely seventeen years old, lured her by inviting her to stay with him at his mansion in Manhattan and arranging and/or paying for airplane tickets, theater tickets, and a personal chauffeur as gifts for her upcoming birthday.

20. As part of Defendant's persistent process of grooming Plaintiff and immersing her in his lewd and abusive lifestyle, Defendant regularly showered the adolescent Plaintiff with gifts, including, but not limited to lingerie, flowers, bikini bathing suit(s), art book(s), purse(s), envelopes of U.S. currency, use of a car, and/or other accoutrements.

21. Defendant possessed photographs of nude underage girls, some of which may have been taken with hidden cameras set up in his residence in Palm Beach. On the day of Defendant's arrest, police found two hidden cameras and photographs of underage girls in Defendant's mansion. Defendant took lewd photographs of Plaintiff with his hidden cameras and transported lewd photographs of Plaintiff and other victims elsewhere using a facility or means of interstate and/or foreign commerce. On one occasion, Defendant manipulated the minor Plaintiff to pose nude for him and photographed her using several rolls of film. One or

more of those nude photographs of Plaintiff that were taken by the Defendant when she was a minor were confiscated by the Palm Beach Police Department during its execution of a search warrant of Defendant's Palm Beach mansion on October 20, 2005.

22. Defendant was particularly skillful at discerning his minor victims' respective hopes, dreams, and ambitions. As he did with many of his victims, Defendant lured Plaintiff early-on with modeling opportunities, impressing her with his modeling business and contacts with supermodels, indicating that he could help her with a modeling career.

23. Knowing that the minor Plaintiff was an excellent student and desired to attend New York University or Columbia University, Defendant pretended to show great interest in her college admission, and offered to help her with her applications and to assist her with her tuition. Defendant had told Plaintiff of his substantial connections within the academic community, a matter about which he often bragged. Defendant took it upon himself to take control of Plaintiff's college application process and led Plaintiff to believe that he was sincere about helping her. Even though she had earned a Bright Futures Scholarship to the Florida college of her choice, Defendant insisted that she would not need it, and that, with his involvement, she would be admitted into one or both of the universities in New York. As a result of Defendant's manipulation, Plaintiff did not apply timely for the Bright Futures Scholarship or to any college, and therefore missed the fall semester of her freshman year. When the Palm Beach Police Department executed the search warrant on Defendant's mansion, among the artifacts found and confiscated were Plaintiff's high school transcript.

24. In June 2008, after an investigation by the Palm Beach Police Department, the State Attorney's Office, the Federal Bureau of Investigation, and the United States Attorney's Office, Defendant entered pleas of "guilty" to one count of solicitation of prostitution, in

violation of Fla. Stat. § 796.07, and one count of solicitation of a minor to engage in prostitution, in violation of Fla. Stat. § 796.03 in the Fifteenth Judicial Circuit in Palm Beach County, Florida.

25. As a condition of that plea, Defendant entered into a Non-Prosecution Agreement, Addendum, and Affirmation (collectively, the "NPA") with the United States Attorney's Office for the Southern District of Florida on September 24, 2007, October 29, 2007, and December 7, 2007, respectively. In so doing, Defendant acknowledged that Plaintiff was one of his victims and agreed to the following provisions of the NPA :

> 8. If any of the [acknowledged victims] elects to file suit pursuant to 18 [redacted]. §2255, Epstein will not contest the jurisdiction of the United States District Court for the Southern District of Florida over his person and/or the subject matter, and Epstein waives his right to contest liability and also waives his right to contest damages up to an amount agreed to between the identified individual and Epstein, so long as the identified individual elects to proceed exclusively under 18 [redacted]. §2255, and agrees to waive any other claim for damages, whether pursuant to state, federal or common law.
>
> 10. *Except as to those individuals who elect to proceed exclusively under 18* [redacted]. *§2255*, as set forth in paragraph (8), *supra*, neither Epstein's signature on this agreement, nor its terms, nor any resulting waivers or settlements by Epstein are to be construed as admissions of evidence or evidence of civil or criminal liability or a waive of any jurisdictional or other defense as to any person, whether or not her name appears on the list provided by the United States (emphasis added).

26. Plaintiff was among the individuals identified by the United States Attorney's Office as victims of Defendant upon whose testimony it intended to base its federal prosecution of Defendant for his illegal conduct. Consequently, Defendant is estopped by his state court plea and the Non-Prosecution Agreement from denying the acts alleged in this Complaint and must effectively admit liability to Plaintiff, [redacted] Doe No. 103.

**COUNT ONE**

**(Cause of Action for Coercion and Enticement of Minor to Engage in Prostitution or Sexual Activity pursuant to 18 [redacted]. § 2255 in Violation of 18 [redacted]. § 2422(b))**

27. Plaintiff hereby adopts, repeats, realleges, and incorporates by reference the allegations contained in paragraphs 1 through 26 above.

28. Defendant used a facility or means of interstate and/or foreign commerce to knowingly persuade, induce, entice, or coerce Plaintiff, when she was under the age of 18 years, to engage in prostitution and/or sexual activity for which any person can be charged with a criminal offense, or attempted to do so, pursuant to 18 [redacted]. § 2255 in violation of 18 [redacted]. § 2422(b).

29. Plaintiff was a victim of one or more offenses enumerated in 18 [redacted]. § 2255, and, as such, asserts a cause of action against Defendant pursuant to this Section of the United States Code.

30. As a direct and proximate result of the offenses enumerated in 18 [redacted]. § 2255 being committed against the then minor Plaintiff by Defendant, Plaintiff has in the past suffered, and will in the future continue to suffer, physical injury, pain and suffering, emotional distress, psychological and/or psychiatric trauma, mental anguish, humiliation, confusion, embarrassment, loss of educational opportunities, loss of self-esteem, loss of dignity, invasion of her privacy, separation from her family, and other damages associated with Defendant's manipulating and luring her into a perverse and unhealthy way of life. The then minor Plaintiff incurred medical and psychological expenses, and Plaintiff will in the future incur additional medical and psychological expenses. Plaintiff has suffered a loss of income, a loss of the capacity to earn income in the future, and a loss of the capacity to enjoy life. These injuries are permanent in nature, and Plaintiff will continue to suffer these losses in the future.

WHEREFORE, Plaintiff demands judgment against Defendant for all damages available under 18 [redacted]. § 2255, including, without limitation, actual and compensatory damages, attorney's fees, costs of suit, and such other further relief as this Court deems just and proper, and hereby demands trial by jury on all issues triable as of right by a jury.

**COUNT TWO**
**(Cause of Action for Travel with Intent to Engage in Illicit Sexual Conduct pursuant to 18 [redacted]. § 2255 in Violation of 18 [redacted]. § 2423(b))**

31. Plaintiff hereby adopts, repeats, realleges, and incorporates by reference the allegations contained in paragraphs 1 through 26 above.

32. Defendant traveled in interstate and/or foreign commerce for the purpose of engaging in illicit sexual conduct, as defined in 18 [redacted]. § 2423(f), with minor females, including the then minor Plaintiff, in violation of 18 [redacted]. § 2423(b).

33. Plaintiff was a victim of one or more offenses enumerated in 18 [redacted]. § 2255, and, as such, asserts a cause of action against Defendant pursuant to this Section of the United States Code.

34. As a direct and proximate result of the offenses enumerated in 18 [redacted]. § 2255 being committed against the then minor Plaintiff by Defendant, Plaintiff has in the past suffered, and will in the future continue to suffer, physical injury, pain and suffering, emotional distress, psychological and/or psychiatric trauma, mental anguish, humiliation, confusion, embarrassment, loss of educational opportunities, loss of self-esteem, loss of dignity, invasion of her privacy, separation from her family, and other damages associated with Defendant's manipulating and luring her into a perverse and unhealthy way of life. The then minor Plaintiff incurred medical and psychological expenses, and Plaintiff will in the future incur additional medical and psychological expenses. Plaintiff has suffered a loss of income, a loss of the capacity to earn

income in the future, and a loss of the capacity to enjoy life. These injuries are permanent in nature, and Plaintiff will continue to suffer these losses in the future.

WHEREFORE, Plaintiff demands judgment against Defendant for all damages available under 18 [redacted]. § 2255, including, without limitation, actual and compensatory damages, attorney's fees, costs of suit, and such other further relief as this Court deems just and proper, and hereby demands trial by jury on all issues triable as of right by a jury.

**COUNT THREE**
**(Cause of Action for Sexual Exploitation of Children pursuant to 18 [redacted]. § 2255 in Violation of 18 [redacted]. § 2251)**

35. Plaintiff hereby adopts, repeats, realleges, and incorporates by reference the allegations contained in paragraphs 1 through 26 above.

36. Defendant knowingly persuaded, induced, enticed, or coerced the then minor Plaintiff to engage in sexually explicit conduct for the purpose of producing a visual depiction of such conduct, in violation of 18 [redacted]. § 2251.

37. Plaintiff was a victim of one or more offenses enumerated in 18 [redacted]. § 2255, and, as such, asserts a cause of action against Defendant pursuant to this Section of the United States Code.

38. As a direct and proximate result of the offenses enumerated in 18 [redacted]. § 2255 being committed against the then minor Plaintiff by Defendant, Plaintiff has in the past suffered, and will in the future continue to suffer, physical injury, pain and suffering, emotional distress, psychological and/or psychiatric trauma, mental anguish, humiliation, confusion, embarrassment, loss of educational opportunities, loss of self-esteem, loss of dignity, invasion of her privacy, separation from her family, and other damages associated with Defendant's manipulating and luring her into a perverse and unhealthy way of life. The then minor Plaintiff incurred medical

and psychological expenses, and Plaintiff will in the future incur additional medical and psychological expenses. Plaintiff has suffered a loss of income, a loss of the capacity to earn income in the future, and a loss of the capacity to enjoy life. These injuries are permanent in nature, and Plaintiff will continue to suffer these losses in the future.

WHEREFORE, Plaintiff demands judgment against Defendant for all damages available under 18 [redacted] § 2255, including, without limitation, actual and compensatory damages, attorney's fees, costs of suit, and such other further relief as this Court deems just and proper, and hereby demands trial by jury on all issues triable as of right by a jury.

**COUNT FOUR**
**(Cause of Action for Transport of Visual Depiction of Minor Engaging in Sexually Explicit Conduct pursuant to 18 [redacted] § 2255 in Violation of 18 [redacted] § 2252(a)(1))**

39. Plaintiff hereby adopts, repeats, realleges, and incorporates by reference the allegations contained in paragraphs 1 through 26 above.

40. Defendant knowingly mailed, transported, shipped, or sent via computer and/or facsimile in or affecting interstate and/or foreign commerce at least one visual depiction of the minor Plaintiff engaging in sexually explicit conduct, in violation of 18 [redacted] § 2252(a)(1).

41. Defendant transported lewd photographs of Plaintiff and other victims elsewhere using a facility or means of interstate and/or foreign commerce.

42. Plaintiff was a victim of one or more offenses enumerated in 18 [redacted] § 2255, and, as such, asserts a cause of action against Defendant pursuant to this Section of the United States Code.

43. As a direct and proximate result of the offenses enumerated in 18 [redacted] § 2255 being committed against the then minor Plaintiff by Defendant, Plaintiff has in the past suffered, and will in the future continue to suffer, physical injury, pain and suffering, emotional distress, psychological and/or psychiatric trauma, mental anguish, humiliation, confusion, embarrassment,

loss of educational opportunities, loss of self-esteem, loss of dignity, invasion of her privacy, separation from her family, and other damages associated with Defendant's manipulating and luring her into a perverse and unhealthy way of life. The then minor Plaintiff incurred medical and psychological expenses, and Plaintiff will in the future incur additional medical and psychological expenses. Plaintiff has suffered a loss of income, a loss of the capacity to earn income in the future, and a loss of the capacity to enjoy life. These injuries are permanent in nature, and Plaintiff will continue to suffer these losses in the future.

WHEREFORE, Plaintiff demands judgment against Defendant for all damages available under 18 [redacted]. § 2255, including, without limitation, actual and compensatory damages, attorney's fees, costs of suit, and such other further relief as this Court deems just and proper, and hereby demands trial by jury on all issues triable as of right by a jury.

**COUNT FIVE**
**(Cause of Action for Transport of Child Pornography pursuant to 18 [redacted]. § 2255 in Violation of 18 [redacted]. § 2252A(a)(1))**

44. Plaintiff hereby adopts, repeats, realleges, and incorporates by reference the allegations contained in paragraphs 1 through 26 above.

45. Defendant knowingly mailed, transported, shipped, or sent via computer and/or facsimile in or affecting interstate and/or foreign commerce child pornography, in violation of 18 [redacted]. § 2252A(a)(1).

46. Defendant transported lewd photographs of Plaintiff and other victims elsewhere using a facility or means of interstate and/or foreign commerce.

47. Plaintiff was a victim of one or more offenses enumerated in 18 [redacted]. § 2255, and, as such, asserts a cause of action against Defendant pursuant to this Section of the United States Code.

48. As a direct and proximate result of the offenses enumerated in 18 [redacted]. § 2255 being committed against the then minor Plaintiff by Defendant, Plaintiff has in the past suffered, and will in the future continue to suffer, physical injury, pain and suffering, emotional distress, psychological and/or psychiatric trauma, mental anguish, humiliation, confusion, embarrassment, loss of educational opportunities, loss of self-esteem, loss of dignity, invasion of her privacy, separation from her family, and other damages associated with Defendant's manipulating and luring her into a perverse and unhealthy way of life. The then minor Plaintiff incurred medical and psychological expenses, and Plaintiff will in the future incur additional medical and psychological expenses. Plaintiff has suffered a loss of income, a loss of the capacity to earn income in the future, and a loss of the capacity to enjoy life. These injuries are permanent in nature, and Plaintiff will continue to suffer these losses in the future.

WHEREFORE, Plaintiff demands judgment against Defendant for all damages available under 18 [redacted]. § 2255, including, without limitation, actual and compensatory damages, attorney's fees, costs of suit, and such other further relief as this Court deems just and proper, and hereby demands trial by jury on all issues triable as of right by a jury.

**COUNT SIX**
**(Cause of Action for Engaging in a Child Exploitation Enterprise pursuant to 18 [redacted]. § 2255 in Violation of 18 [redacted]. § 2252A(g))**

49. Plaintiff hereby adopts, repeats, realleges, and incorporates by reference the allegations contained in paragraphs 1 through 26 above and Counts One through Five above.

50. Defendant knowingly engaged in a child exploitation enterprise, as defined in 18 [redacted]. § 2252A(g)(2), in violation of 18 [redacted]. § 2252A(g)(1). As more fully set forth above, Defendant engaged in actions that constitute countless violations of 18 [redacted]. § 1591 (sex trafficking of children), Chapter 110 (sexual exploitation of children in violation of 18 [redacted]. §§

2251, 2252(a)(1), and 2252(A)(a)(1)), and Chapter 117 (transportation for illegal sexual activity in violation of 18 [redacted]. §§ 2421, 2422(b), and 2423(b)). As more fully set forth above in paragraphs 1 through 26, Defendant's actions involved countless victims and countless separate incidents of sexual abuse, which he committed against minors, including Plaintiff, in concert with at least three other persons.

51. Plaintiff was a victim of one or more offenses enumerated in 18 [redacted]. § 2255, and, as such, asserts a cause of action against Defendant pursuant to this Section of the United States Code.

52. As a direct and proximate result of the offenses enumerated in 18 [redacted]. § 2255 being committed against the then minor Plaintiff by Defendant, Plaintiff has in the past suffered, and will in the future continue to suffer, physical injury, pain and suffering, emotional distress, psychological and/or psychiatric trauma, mental anguish, humiliation, confusion, embarrassment, loss of educational opportunities, loss of self-esteem, loss of dignity, invasion of her privacy, separation from her family, and other damages associated with Defendant's manipulating and luring her into a perverse and unhealthy way of life. The then minor Plaintiff incurred medical and psychological expenses, and Plaintiff will in the future incur additional medical and psychological expenses. Plaintiff has suffered a loss of income, a loss of the capacity to earn income in the future, and a loss of the capacity to enjoy life. These injuries are permanent in nature, and Plaintiff will continue to suffer these losses in the future.

WHEREFORE, Plaintiff demands judgment against Defendant for all damages available under 18 [redacted]. § 2255, including, without limitation, actual and compensatory damages,

attorney's fees, costs of suit, and such other further relief as this Court deems just and proper, and hereby demands trial by jury on all issues triable as of right by a jury.

Date: February 23, 2010.

Respectfully Submitted,

By: Robert [redacted]. Josefsberg by KWE

Robert [redacted]. Josefsberg
Bar No. 040856
Katherine W. Ezell
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WJZ 1018042

JS 44 (Rev. 2/08)

# CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.) **NOTICE: Attorneys MUST Indicate Sealed Cases Below.**

**I. (a) PLAINTIFFS**

[redacted] Doe No. 103

10-80309

**DEFENDANTS**

Jeffrey Epstein

FILED by EB D.C.
FEB 23 2010
STEVEN M. LARIMORE
CLERK U. S. DIST. CT.
S. D. of FLA. - MIAMI

(b) County of Residence of First Listed Plaintiff West Palm Beach
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant United States Virgin Islands
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) Attorney's (Firm Name, Address, and Telephone Number)

Robert [redacted]. Josefsberg, Esq./Katherine W. Ezell, Esq.
Podhurst Orseck, P.A.
25 W. Flagler St., Suite 800
Miami, FL 33130

Attorneys (If Known)

Robert D. Critton, Esq., Burman, Critton, Luttier & Coleman, LLP,
303 Banyan Blvd., Suite 400, West Palm Beach, FL 33401

(d) Check County Where Action Arose: ☐ MIAMI- DADE ☐ MONROE ☐ BROWARD ☑ PALM BEACH ☐ MARTIN ☐ ST. LUCIE ☐ INDIAN RIVER ☐ OKEECHOBEE ☐ HIGHLANDS

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☑ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)
(For Diversity Cases Only)

| | PTF | DEF | | PTF | DEF |
|---|---|---|---|---|---|
| Citizen of This State | ☑ 1 | ☐ 1 | Incorporated or Principal Place of Business In This State | ☐ 4 | ☐ 4 |
| Citizen of Another State | ☐ 2 | ☑ 2 | Incorporated and Principal Place of Business In Another State | ☐ 5 | ☐ 5 |
| Citizen or Subject of a Foreign Country | ☐ 3 | ☐ 3 | Foreign Nation | ☐ 6 | ☐ 6 |

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

| CONTRACT | TORTS | | FORFEITURE/PENALTY | BANKRUPTCY | OTHER STATUTES |
|---|---|---|---|---|---|
| ☐ 110 Insurance | PERSONAL INJURY | PERSONAL INJURY | ☐ 610 Agriculture | ☐ 422 Appeal 28 USC 158 | ☐ 400 State Reapportionment |
| ☐ 120 Marine | ☐ 310 Airplane | ☐ 362 Personal Injury - Med. Malpractice | ☐ 620 Other Food & Drug | ☐ 423 Withdrawal 28 USC 157 | ☐ 410 Antitrust |
| ☐ 130 [redacted] Act | ☐ 315 Airplane Product Liability | ☐ 365 Personal Injury - Product Liability | ☐ 625 Drug Related Seizure of Property 21 USC 881 | | ☐ 430 Banks and Banking |
| ☐ 140 Negotiable Instrument | ☐ 320 Assault, Libel & Slander | ☐ 368 Asbestos Personal Injury Product Liability | ☐ 630 Liquor Laws | PROPERTY RIGHTS | ☐ 450 Commerce |
| ☐ 150 Recovery of Overpayment & Enforcement of Judgment | ☐ 330 Federal Employers' Liability | PERSONAL PROPERTY | ☐ 640 R.R. & Truck | ☐ 820 Copyrights | ☐ 460 Deportation |
| ☐ 151 Medicare Act | ☐ 340 Marine | ☐ 370 Other Fraud | ☐ 650 Airline Regs. | ☐ 830 Patent | ☐ 470 Racketeer Influenced and Corrupt Organizations |
| ☐ 152 Recovery of Defaulted Student Loans (Excl. Veterans) | ☐ 345 Marine Product Liability | ☐ 371 Truth in Lending | ☐ 660 Occupational Safety/Health | ☐ 840 Trademark | ☐ 480 Consumer Credit |
| ☐ 153 Recovery of Overpayment of Veteran's Benefits | ☐ 350 Motor Vehicle | ☐ 380 Other Personal Property Damage | ☐ 690 Other | | ☐ 490 Cable/Sat TV |
| ☐ 160 Stockholders' Suits | ☐ 355 Motor Vehicle Product Liability | ☐ 385 Property Damage Product Liability | LABOR | SOCIAL SECURITY | ☐ 810 Selective Service |
| ☐ 190 Other Contract | ☑ 360 Other Personal Injury | | ☐ 710 Fair Labor Standards Act | ☐ 861 HIA (1395ff) | ☐ 850 Securities/Commodities/ Exchange |
| ☐ 195 Contract Product Liability | | | ☐ 720 Labor/Mgmt. Relations | ☐ 862 Black Lung (923) | ☐ 875 Customer Challenge 12 USC 3410 |
| ☐ 196 Franchise | | | ☐ 730 Labor/Mgmt.Reporting & Disclosure Act | ☐ 863 DIWC/DIWW (405(g)) | ☐ 890 Other Statutory Actions |
| REAL PROPERTY | CIVIL RIGHTS | PRISONER PETITIONS | ☐ 740 Railway Labor Act | ☐ 864 SSID Title XVI | ☐ 891 Agricultural Acts |
| ☐ 210 Land Condemnation | ☐ 441 Voting | ☐ 510 Motions to Vacate Sentence | ☐ 790 Other Labor Litigation | ☐ 865 RSI (405(g)) | ☐ 892 Economic Stabilization Act |
| ☐ 220 Foreclosure | ☐ 442 Employment | Habeas Corpus: | ☐ 791 Empl. Ret. Inc. Security Act | FEDERAL TAX SUITS | ☐ 893 Environmental Matters |
| ☐ 230 Rent Lease & Ejectment | ☐ 443 Housing/ Accommodations | ☐ 530 General | | ☐ 870 Taxes (U.S. Plaintiff or Defendant) | ☐ 894 Energy Allocation Act |
| ☐ 240 Torts to Land | ☐ 444 Welfare | ☐ 535 Death Penalty | IMMIGRATION | ☐ 871 IRS—Third Party 26 USC 7609 | ☐ 895 Freedom of Information Act |
| ☐ 245 Tort Product Liability | ☐ 445 Amer. w/Disabilities - Employment | ☐ 540 Mandamus & Other | ☐ 462 Naturalization Application | | ☐ 900 Appeal of Fee Determination Under Equal Access to Justice |
| ☐ 290 All Other Real Property | ☐ 446 Amer. w/Disabilities - Other | ☐ 550 Civil Rights | ☐ 463 Habeas Corpus-Alien Detainee | | |
| | ☐ 440 Other Civil Rights | ☐ 555 Prison Condition | ☐ 465 Other Immigration Actions | | ☐ 950 Constitutionality of State Statutes |

**[redacted]. ORIGIN** (Place an "X" in One Box Only)

☑ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Re-filed- (see VI below) ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

**VI. RELATED/RE-FILED CASE(S).** (See instructions second page):

a) Re-filed Case ☐ YES ☑ NO b) Related Cases ☑ YES ☐ NO

JUDGE Kenneth A. Marra DOCKET NUMBER See Attached.

**VII. CAUSE OF ACTION** Cite the U.S. Civil Statute under which you are filing and Write a Brief Statement of Cause (**Do not cite jurisdictional statutes unless diversity**):

18 [redacted]. 2255 (Predicate Statutes 18 [redacted]. 2422(b), 2423(b), 2423(e), 2251, 2252, 2252A(a)(1), 2252A(g)(1)

LENGTH OF TRIAL via 5 days estimated (for both sides to try entire case)

**VIII. REQUESTED IN COMPLAINT:** ☐ CHECK IF THIS IS A CLASS ACTION UNDER [redacted]. 23 DEMAND $ In excess of $ 75,000.00 CHECK YES only if demanded in complaint: JURY DEMAND: ☑ Yes ☐ No Sealed

**ABOVE INFORMATION IS TRUE & CORRECT TO THE BEST OF MY KNOWLEDGE**

SIGNATURE OF ATTORNEY OF RECORD s/ Katherine W. Ezell DATE 2/23/10

FOR OFFICE USE ONLY

AMOUNT 350.00 RECEIPT # 1018042 IFP

2/23/[redacted]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION

**ATTACHMENT TO CIVIL COVER SHEET**
**FOR: [redacted] Doe 103 [redacted]. Jeffrey Epstein**

VI. RELATED PENDING CASES

08-80119 - KAM
08-80232 - KAM
08-80380 - KAM
08-80381 - KAM
08-80811 - KAM
08-80893 - KAM
08-80993 - KAM
08-80994 - KAM
09-80469 - KAM
09-80802 - KAM
09-81092 - KAM

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

BLACK
SREBNICK
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March 29, 2010

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RE: Jeffrey Epstein

Dear Counsel:

Jeffrey Epstein has an April 5, 2010 deadline for the filing of a Motion to Dismiss, and thereafter an Answer, to claims brought by [redacted] Doe 103 pursuant to 18 USC §2255 that were referenced in our earlier letter to you dated March 5, 2010, to which there has been no response. We firmly believe that the issues raised in the draft motion that is appended to this letter do not conflict with, nor, if filed, breach Mr. Epstein's obligations under the NPA.

Please advise if any of the issues in the draft motion authored by his civil counsel Robert Critton are, from your perspective, in conflict with the §2255 provisions of the NPA so that we may reassess our legal opinion that Mr. Epstein's civil counsel can litigate the legal issues contained in the draft motion without fear that the litigation will be construed by your office as being in violation of the NPA. If the government believes that any of the issues intended to be raised in defense of the [redacted] Doe 103 lawsuit are in breach of Mr. Epstein's obligations under the NPA, we request notice so that we could decide before any filing whether to file a

Declaratory Judgment action asking the Court presiding over the [redacted] Doe 103 lawsuit to determine whether the raising of the issue by motion or defense would be in conflict with Mr. Epstein's contractual duties under the NPA or to withdraw the issue to the extent we become convinced that your position, if in conflict with ours, is correct.

Again, Mr. Epstein's paramount priority, and ours, is that the terms of Mr. Epstein's agreement with the government be followed and fulfilled.

Your truly,

MARTIN WEINBERG, ESQ.
ROY BLACK, ESQ.

By _____

/wg

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 10-80309-CIV-

[redacted] DOE No. 103,

Plaintiff,

vs.

JEFFERY EPSTEIN,

Defendant.
_____/

**DEFENDANT EPSTEIN'S MOTION TO DISMISS, & FOR MORE DEFINITE STATEMENT & STRIKE DIRECTED TO PLAINTIFF [redacted] DOE NO. 103'S COMPLAINT [dated 2/23/2010]**

Defendant, JEFFREY EPSTEIN, ("EPSTEIN"), by and through his undersigned counsel, moves to dismiss Counts One through Six of Plaintiff [redacted] DOE 103's Complaint for failure to state a cause of action, as specified herein. Rule 12(b)(6), Fed.R.Civ.P. (2009); Local Gen. Rule 7.1 (S.D. Fla. 2009). Defendant further moves for more definite statement and to strike. Rule 12(e) and (f), In support of his motion, Defendant states:

The Complaint attempts to allege 6 counts, all of which are purportedly brought pursuant to 18 [redacted]. §2255 – *Civil Remedies for Personal Injuries*. Dismissal is required on the following grounds: (1) 18 [redacted]. §2255 allows for a single recovery of "actual damages." (A.) Statutory Considerations: the statute does not allow for the Plaintiff to allege multiple counts, six in this case, or multiple predicate act violations or incidents, in an effort to multiply or seek duplicate recoveries of her "actual damages"

based on the number of predicate act violations or incidents. The statutory minimum is just that – a minimum; nothing prevents a plaintiff from proving and recovering "actual damages" in excess of the minimum amount. (B.) Constitutional Considerations: in the alternative, constitutional principles require that the statute be interpreted as allowing for a single recovery of one's damages. Thus, to the extent Plaintiff is seeking to improperly multiply or seek duplicate recoveries of her actual damages, the action is required to be dismissed. (2) The statute in effect during the time of the alleged conduct applies – the version in effect from 1999 to July 26, 2006, not the statute as amended in 2006, effective July 27, 2006. To the extent Plaintiff is attempting to rely on the amended version of the statute, such reliance is improper and also requires dismissal of the entire action. (3) Count VI is also subject to dismissal because the predicate act relied upon by Plaintiff did not come into effect until July 27, 2006, well after the conduct alleged by Plaintiff occurred.

**Supporting Memorandum of Law**

**Principles of Statutory Interpretation**

It is well settled that in interpreting a statute, the court's inquiry begins with the plain and unambiguous language of the statutory text. CBS, Inc. [redacted]. Prime Time 24 Venture, 245 F.3d 1217 (11th Cir. 2001); U.S. [redacted]. Castroneves, 2009 WL 528251, *3 (S.D. Fla. 2009), citing Reeves [redacted]. Astrue, 526 F.3d 732, 734 (11th Cir. 2008); and Smith [redacted]. Husband, 376 F.Supp.2d at 610 ("When interpreting a statute, [a court's] inquiry begins with the text."). "The Court must first look to the plain meaning of the words, and scrutinize the statute's 'language, structure, and purpose.'" Id. In addition, in construing a statute, a court is to presume that the legislature said what it means and means what it said, and not add language or give some absurd or strained interpretation. As stated in

CBS, Inc., supra at 1228 – "Those who ask courts to give effect to perceived legislative intent by interpreting statutory language contrary to its plain and unambiguous meaning are in effect asking courts to alter that language, and '[]ourts have no authority to alter statutory language.... We cannot add to the terms of [the] provision what Congress left out.' *Merritt,* 120 F.3d at 1187." See also Dodd [redacted], U.S., 125 S.Ct. 2478 (2005); 73 Am.Jur.2d *Statutes* §124.

Title 18 of the [redacted]. is entitled "Crimes and Criminal Procedure." §2255 is contained in "Part I. Crimes, Chap. 110. Sexual Exploitation and Other Abuse of Children." 18 [redacted]. §2255 (2002)[1], is entitled ***Civil remedy for personal injuries,*** and provides:

> (a) Any minor who is a victim of a violation of section 2241([redacted]), 2242, 2243, 2251, 2251A, 2252, 2252A, 2260, 2421, 2422, or 2423 of this title and who suffers personal injury as a result of such violation may sue in any appropriate United States District Court and shall recover the actual damages such minor sustains and the cost of the suit, including a reasonable attorney's fee. Any minor as described in the preceding sentence shall be deemed to have sustained damages of no less than $50,000 in value.
>
> (b) Any action commenced under this section shall be barred unless the complaint is filed within six years after the right of action first accrues or in the case of a person under a legal disability, not later than three years after the disability.

See endnote 1 hereto for statutory text as amended in 2006, effective July 27, 2006. Prior to the 2006 amendments, the version of the statute quoted above was in effect beginning in 1999.[1]

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[1] The above quoted version of 18 [redacted]. §2255 was the same beginning in 1999 until amended in 2006, effective July 27, 2006.

## Motion to Dismiss

**(1) The remedy afforded pursuant to 18 [redacted]. §2255 allows for a single recovery of "actual damages" by a plaintiff against a defendant. The recovery afforded is not on a per violation or per incident or per count basis.[2]**

(A.) Statutory Considerations. 18 [redacted]. §2255 - *Civil Remedy for Personal Injuries*, creates a federal cause of action or "civil remedy" for a minor victim of sexual, abuse, molestation and exploitation, and allows for a single recovery of the "actual damages" sustained and proven by a "minor who is a victim of a violation" of an enumerated predicated act and who suffers personal injury as a result of such violation." "18 [redacted]. §2255 gives victims of sexual conduct who are minors a private right of action." Martinez [redacted]. White, 492 F.Supp.2d 1186, 1188 (N.D. Cal. 2007). 18 [redacted]. §2255 "merely provides a cause of action for damages in 'any appropriate United States District Court.'" Id, at 1189.

Under the plain meaning of the statute, §2255 does not allow for the actual damages sustained to be duplicated or multiplied on behalf of a plaintiff against a defendant on a "per violation" or "per incident" or "per count" basis. No where in the

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[2] In other §2255 actions filed against Defendant, Defendant has previously asserted the position that 18 [redacted]. §2255's creates a single cause of action on behalf of a plaintiff against a defendant, as opposed to multiple causes of action on a per violation basis or as opposed to an allowance of a multiplication of the statutory presumptive minimum damages or "actual damages." EPSTEIN asserts his position regarding the single recovery of damages in order to properly preserve all issues pertaining to the proper application of §2255 for appeal. **EPSTEIN will fully honor his obligations as set forth in the Non-Prosecution Agreement with the United States Attorney's Office; principally, as related to the claims made in this case by [redacted] Doe 103, the obligations as set forth in paragraph 8 of that Agreement. In particular, EPSTEIN will not contest the allegation that he committed at least one predicate offense as alleged by [redacted] Doe 103, a waiver sufficient to satisfy the 2255 statutory condition that [redacted] Doe 103 was a victim of the commission of one of the enumerated predicate violations as required.**

statutory text is there any reference to the recovery of damages afforded by this statute as being on a "per violation" or "per incident" or "per count" basis. 18 [redacted]. 2255(a) creates a civil remedy for "a minor who is a victim of a violation of section 2241([redacted]), 2242, 2243, 2251, 2251A, 2252, 2252A, 2260, 2421, 2422, or 2423 of this title and who suffers personal injury as a result of such violation … ." The statute speaks in terms of the recovery of the "actual damages such minor sustains and the cost of suit, including attorney's fees." See 18 [redacted]. §2255(a) (2002). See Smith [redacted]. Husband, 428 F.Supp.2d 432 (E.D. Va. 2006); Smith [redacted]. Husband, 376 F.Supp.2d 603 (E.D. Va. 2006); Doe [redacted]. Liberatore, 478 F.Supp.2d 742, 754 (M.D. Pa. 2007); and the recent cases in front of this court on Defendant's Motions to Dismiss and For More Definite Statement – Doe No. 2 [redacted]. Epstein, 2009 WL 383332 (S.D. Fla. Feb. 12, 2009); Doe No. 3 [redacted]. Epstein, 2009 WL 383330 (S.D. Fla. Feb. 12, 2009); Doe No. 4 [redacted]. Epstein, 2009 WL 383286 (S.D. Fla. Feb. 12, 2009); and Doe No. 5 [redacted]. Epstein, 2009 WL 383383 (S.D. Fla. Feb. 12, 2009); see also U.S. [redacted]. Scheidt, Slip Copy, 2010 WL 144837, fn. 1 (E.D.Cal. Jan. 11, 2010); U.S. [redacted]. Renga, 2009 WL 2579103, fn. 1 (E.D. Cal. Aug. 19, 2009); U.S. [redacted]. Ferenci, 2009 WL 2579102, fn. 1 (E.D. Cal. Aug. 19, 2009); U.S. [redacted]. Monk, 2009 WL 2567831, fn. 1 (E.D. Cal. Aug. 18, 2009); U.S. [redacted]. Zane, 2009 WL 2567832, fn.1 (E.D. Cal. Aug. 18 2009).

As to the meaning of "actual damages," the Eleventh Circuit in McMillian [redacted]. [redacted]., 81 F.3d 1041, 1055 (11th Cir.1996)[3], succinctly explained:

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[3] In McMillian, the 11th Circuit was faced with the task of the interpretation of the statutory term "actual direct compensatory damages" under FIRREA, 12 [redacted]. §1821(e)(3)(i). In doing so, the Court began with the plain meaning of the phrase. *See* Perrin [redacted]. United States, 444 U.S. 37, 42-43, 100 S.Ct. 311, 314, 62 L.Ed.2d 199 (1979) ("A fundamental canon of statutory construction is that, unless otherwise defined, words will be interpreted as taking their ordinary, contemporary common meaning."); United States [redacted]. McLymont, 45 F.3d 400, 401 (11th Cir.), *cert. denied,* 514 U.S. 1077, 115 S.Ct.

> … "Compensatory damages" are defined as those damages that "will compensate the injured party for the injury sustained, and nothing more; such as will simply make good or replace the loss caused by the wrong or injury." Black's Law Dictionary (6th Ed.1991). **"Actual damages," roughly synonymous with compensatory damages, are defined as "[r]eal, substantial and just damages, or the amount awarded to a complainant in compensation for his actual and real loss or injury, as opposed ... to 'nominal' damages [and] 'punitive' damages."** *Id.*[FN15] Finally, "[d]irect damages are such as follow immediately upon the act done." *Id.* **Thus, "actual direct compensatory damages" appear to include those damages, flowing directly from the repudiation, which make one whole, as opposed to those which go farther by including future contingencies such as lost profits and opportunities or damages based on speculation.** [Citation omitted]. …
>
> FN15. According to *Corpus Juris Secundum,* " **'Compensatory damages' and 'actual damages' are synonymous terms ... and include[ ] all damages other than punitive or exemplary damages."** 25 [redacted]. Damages § 2 (1966).
>
> (**Emphasis** added).

See also, Fanin [redacted]. U.S. Dept. of Veteran Affairs, 2009 WL 1677233 (11th Cir. June 17, 2009), citing Fitzpatrick [redacted]. IRS, 665 F.2d 327, 331 (11th Cir. 1982), *abrogated on other grounds by* Doe [redacted]. Chao, 540 U.S. 614, 124 S.Ct. 1204 (2004); ("Actual damages" recoverable under the Privacy Act are "proven pecuniary losses and not for generalized mental injuries, loss of reputation, embarrassment or other non-qualified injuries;" and the statutory minimum of $1,000 under the Privacy Act is not available unless the plaintiff suffered some amount of "actual damages.").

Considering the plain meaning of "actual damages" and the purpose of such damages is to "make one whole," to allow a duplication or multiplication of the actual damages sustained is in direct conflict with the well entrenched legal principle against duplicative damages recovery. See generally, [redacted]. [redacted]. Waffle House, Inc., 534 U.S.

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1723, 131 L.Ed.2d 581 (1995) ("[T]he plain meaning of this statute controls unless the language is ambiguous or leads to absurd results.").

279, 297, 122 S.Ct. 754, 766 (2002)("As we have noted, it 'goes without saying that the courts can and should preclude double recovery by an individual.'"), citing General Telephone, 446 U.S., at 333, 100 S.Ct. 1698.

The purpose of damages recovery where a Plaintiff has suffered personal injury as a result of Defendant's misconduct is to make the plaintiff whole, not to enrich the plaintiff. See 22 Am.Jur.2d *Damages* §36, stating the settled legal principle that –

> The law abhors duplicative recoveries, and a plaintiff who is injured by a defendant's misconduct is, for the most part, entitled to be made whole, not enriched. Hence, for one injury, there should be one recovery, irrespective of the availability of multiple remedies and actions. Stated otherwise, a party cannot recover the same damages twice, even if recovery is based on different theories.
>
> ...
>
> , a plaintiff who alleges separate causes of action is not permitted to recover more than the amount of damages actually suffered. There cannot be a double recovery for the same loss, even though different theories of liability are alleged in the complaint. ... .

See also, 22 Am.Jur.2d *Damages* § 28 –

> The law abhors duplicative recoveries; in other words, a plaintiff who is injured by reason of a defendant's behavior is, for the most part, entitled to be made whole, not to be enriched. The sole object of compensatory damages is to make the injured party whole for losses actually suffered; the plaintiff cannot be made more than whole, make a profit, or receive more than one recovery for the same harm. Thus, a plaintiff in a civil action for damages cannot, in the absence of punitive or statutory treble damages, recover more than the loss actually suffered. The plaintiff is not entitled to a windfall, and the law will not put him in a better position than he would be in had the wrong not been done or the contract not been broken.

See also recent case of U.S. [redacted], Baker, 2009 WL 4572, at *8, (E.D. Tx. Dec. 7, 2009), wherein the Court was inclined to agree with the defendant's interpretation of §2255(a) of allowing for a single recovery of the statutory minimum damages amount as opposed to the government's argument that "the minimum amount of damages mandated by 18 [redacted]. §2255(a) applies to each of (pornographic) image produced by

[defendant]." The government attempted to argue that restitution should be equal to the statutory minimum amount times the 55 photos produced by defendant. In rejecting the government's argument, the Court reiterated that the statutory minimum is a floor for damages – in other words, a mandated minimum. Nothing prevents a plaintiff from proving that he or she suffered damages in a greater amount.

In attempting to bring six counts pursuant to §2255, Plaintiff's complaint alleges in part that "Plaintiff was merely a seventeen year old high school student when she was first lured into Defendant's sexually exploitive world in or about January 2004." Complaint, ¶17. According to the allegations, Plaintiff "was recruited while at work by a co-worker, one of the minor victims Defendant paid to procure underage females." Id. The Complaint further alleges, ¶¶17-26, that Defendant "sexually abused and/or battered and/or exploited Plaintiff at least 100 times between January 2004 and May 2005." If Plaintiff were 17 in January, 2004, she was at least 18 (the age of majority) in January 2005, if not sooner.[4]

Plaintiff alleges identical damages in each of the six counts. Complaint, ¶¶30, 34, 38, 43, 48, and 52. See endnote 2 hereto for Complaint allegations.[2] In other words, Plaintiff is alleging and seeking recovery of duplicative damages in each of the six counts. To the extent Plaintiff is seeking to duplicate her "actual damages" on a per incident or per violation or per count basis, Plaintiff's action is required to be dismissed for failure to state a cause of action.

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[4] Defendant is moving for more definite statement requiring Plaintiff to specifically state her date of birth because her age and when she reached the age of majority may impact her ability to even pursue a §2255 claim.

Had Congress wanted to write in a multiplier of actual damages recoverable it could have easily done so. For an example of a statute wherein the legislature included the language "for each violation" in assessing a "civil penalty," see 18 [redacted]. §216, entitled "*Penalties and injunctions,*" of Chapter 11 – "Bribery, Graft, and Conflict of Interests," also contained in Title 18 – "Crimes and Criminal Procedure." Subsection (b) of §216 gives the United States Attorney General the power to bring a "civil action ... against any person who engages in conduct constituting an offense under" specified sections of the bribery, graft, and conflicts of interest statutes. The statute further provides in relevant part that "upon proof of such conduct by a preponderance of the evidence, such person shall be subject to a civil penalty of not more than $50,000 for each violation or the amount of compensation which the person received or offered for the prohibited conduct, which ever amount is greater." As noted, 18 [redacted]. §2255 does not include such language.

B. Constitutional Considerations.[5] As set forth above, it is Defendant's position that the text of 18 [redacted]. §2255 does not allow a Plaintiff to pursue the recovery of actual damages or the minimum afforded under the statute on a "per violation" or "per incident" basis by attempting to allege multiple counts thereunder. In the alternative, if one were to assume that the language of §2255 were vague or ambiguous, under the constitutional based protections of due process, judicial restraint, and the rule of lenity applied in construing a statute, Defendant's position as to the meaning of the statute would prevail. See United States [redacted]. Santos, 128 S.Ct. 2020, 2025 (2008). As summarized by the United States Supreme Court in Santos, supra, at 2025:

[5] See argument in sections (2) and (3) that follow which represent the predicate for the rule of lenity issue discussed in B.

> ... The rule of lenity requires ambiguous criminal laws to be interpreted in favor of the defendants subjected to them. See *United States* [redacted]. *Gradwell,* 243 U.S. 476, 485, 37 S.Ct. 407, 61 L.Ed. 857 (1917); *McBoyle* [redacted]. *United States,* 283 U.S. 25, 27, 51 S.Ct. 340, 75 L.Ed. 816 (1931); *United States* [redacted]. *Bass,* 404 U.S. 336, 347-349, 92 S.Ct. 515, 30 L.Ed.2d 488 (1971). This venerable rule not only vindicates the fundamental principle that no citizen should be held accountable for a violation of a statute whose commands are uncertain, or subjected to punishment that is not clearly prescribed. It also places the weight of inertia upon the party that can best induce Congress to speak more clearly and keeps courts from making criminal law in Congress's stead. ...

In Santos, the Court was faced with the interpretation of the term "proceeds" in the federal money laundering statute, 18 [redacted]. §1956. "The federal money-laundering statute prohibits a number of activities involving criminal 'proceeds.'" Id, at 2023. Noting that the term "proceeds" was not defined in the statute, the Supreme Court stated the well settled principle that "when a term is undefined, we give it its ordinary meaning." Id, at 2024. Under the ordinary meaning principle, the government's position was that proceeds meant "receipts," while the defendant's position was that proceeds meant "profits." The Supreme Court recognized that under either of the proffered "ordinary meanings," the provisions of the federal money-laundering statute were still coherent, not redundant, and the statute was not rendered "utterly absurd." Under such a situation, citing to a long line of cases and the established rule of lenity, "the tie must go to the defendant." Id, at 2025. See portion of Court's opinion quoted above. "Because the 'profits' definition of 'proceeds' is always more defendant friendly that the 'receipts' definition, the rule of lenity dictates that it should be adopted." Id.

The recent case of United States [redacted]. Berdeal, 595 F.Supp.2d 1326 (S.D. Fla. 2009), further supports Defendant's argument that the "rule of lenity" requires that the Court resolve any statutory interpretation conflict in favor of Defendant. Assuming for the sake of argument that Plaintiff's multiple counts, leading to a multiplication of the statutory

damages amount, is a reasonable interpretation, like Defendant's reasonable interpretation, under the "rule of lenity," any ambiguity is resolved in favor of the least draconian measure. In Berdeal, applying the rule of lenity, the Court sided with the Defendants' interpretation of the Lacey Act which makes illegal the possession of snook caught in specified jurisdictions. The snook had been caught in Nicaraguan waters. The defendants filed a motion to dismiss asserting the statute did not encompass snook caught in foreign waters. The United States disagreed. Both sides presented reasonable interpretations regarding the reach of the statute. In dismissing the indictment, the Court determined that the rule of lenity required it to accept defendants' interpretation.

To allow a duplication or multiplication would subject Defendant EPSTEIN to a punishment that is not clearly prescribed – an unwritten multiplier of the "actual damages" or the presumptive minimum damages. The rule of lenity requires that Defendant's interpretation of the remedy afforded under §2255 be adopted.

In addition, under the Due Process Clause's basic principle of fair warning -

> … a criminal statute must give fair warning of the conduct that it makes a crime … . As was said in United States [redacted]. Harriss, 347 U.S. 612, 617, 74 S.Ct. 808, 812, 98 L.Ed. 989,
>
> > 'The constitutional requirement of definiteness is violated by a criminal statute that fails to give a person of ordinary intelligence fair notice that his contemplated conduct is forbidden by the statute. The underlying principle is that no man shall be held criminally responsible for conduct which he could not reasonably understand to be proscribed.'
>
> Thus we have struck down a [state] criminal statute under the Due Process Clause where it was not 'sufficiently explicit to inform those who are subject to it what conduct on their part will render them liable to its penalties.' Connally [redacted]. General Const. Co., 269 U.S. 385, 391, 46 S.Ct. 126, 127, 70 L.Ed. 322. We have recognized in such cases that 'a statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application violates the first essential of due process of law,' ibid., and that

> 'No one may be required at peril of life, liberty or property to speculate as to the meaning of penal statutes. All are entitled to be informed as to what the State commands or forbids.' Lanzetta [redacted]. New Jersey, 306 U.S. 451, 453, 59 S.Ct. 618, 619, 83 L.Ed. 888.

Thus, applying the statutory analysis, in A. and these well-entrenched constitutional principles of statutory interpretation and application in B., Plaintiff's cause of action – Counts One through Six – to the extent Plaintiff is attempting to multiply actual damages or the presumptive amount of damages, is required to be dismissed for failure to state a cause of action.

> **(2) In addition, if Plaintiff is relying on the amended version of 18 [redacted]. §2255, such reliance is improper and requires dismissal of the entire action. It is Defendant's position that 18 [redacted]. §2255 in effect prior to the 2006 amendments applies to this action.**
>
> **(3) Further, Count Six is also required to be dismissed as it relies on a predicate act that was not in effect at the time of the alleged conduct.[6]**

Plaintiff does not specifically allege in her Complaint on which version of 18 [redacted]. §2255 she is relying. However, in the purported Count Six of her Complaint, ¶50, she alleges that Defendant "knowingly engaged in a child exploitation enterprise, as defined in 18 [redacted]. §2252A(g)(2), in violation of 18 [redacted]. §2252A(g)(1)." §2252A is one of the specified predicate acts under 18 [redacted]. §2255. However, subsection (g) of §2252 was not added to the statute until 2006. Thus, to the extent that Plaintiff is relying on the amended version, such reliance is improper and the entire action is required to be dismissed. Further, in the alternative, Count Six is required to be dismissed as it relies on a statutory predicate act that did not exist at the time of the alleged conduct.

The statute in effect during the time the alleged conduct occurred is 18 [redacted]. §2255 (2005) – the version in effect prior to the 2006 amendment, eff. Jul. 27, 2006,

[6] Points (2) and (3) are addressed together as the legal arguments overlap.

(quoted above), and having an effective date of 1999 through July 26, 2006. See endnote 1 hereto. Plaintiff's Complaint alleges that Defendant's conduct occurred during the time period **from the age of 17, January 2004 until approximately May 2005**. Complaint, ¶¶17, 18. Thus, the version in effect in 2004-2005 of 18 [redacted]. §2255 applies.

Under applicable law, the statute in effect at the time of the alleged conduct applies. See U.S. [redacted]. Scheidt, Slip Copy, 2010 WL 144837, fn. 1 (E.D.Cal. Jan. 11, 2010); U.S. [redacted]. Renga, 2009 WL 2579103, fn. 1 (E.D. Cal. Aug. 19, 2009); U.S. [redacted]. Ferenci, 2009 WL 2579102, fn. 1 (E.D. Cal. Aug. 19, 2009); U.S. [redacted]. Monk, 2009 WL 2567831, fn. 1 (E.D. Cal. Aug. 18, 2009); U.S. [redacted]. Zane, 2009 WL 2567832, fn.1 (E.D. Cal. Aug. 18 2009). In each of these cases, the referenced footnote states –

> Prior to July 27, 2006, the last sentence in Section §2255(a) read "Any person as described in the preceding sentence shall be deemed to have sustained damages of no less than $50,000 in value." Under the civil statute, the minimum restitution amount for any violation of Section 2252 (the predicate act at issue) is $150,000 for violations occurring after July 27, 2006 and $50,000 for violations occurring prior to $50,000.

Even with the typo (the extra "$50,000") at the end of the quoted sentence, it is clear that the Court applied the statute in effect at the time of the alleged criminal conduct constituting one of the statutorily enumerated predicate acts, which is consistent with applicable law discussed more fully below herein.

It is an axiom of law that "retroactivity is not favored in the law." Bowen, 488 U.S., at 208, 109 S.Ct., at 471 (1988). As eloquently stated in Landgraf [redacted]. USI Film Products, 114 S.Ct. 1483, 1497, 511 U.S. 244, 265-66 (1994):

> ... the presumption against retroactive legislation is deeply rooted in our jurisprudence, and embodies a legal doctrine centuries older than our Republic. Elementary considerations of fairness dictate that individuals should have an opportunity to know what the law is and to conform their conduct accordingly; settled

expectations should not be lightly disrupted.[FN18] For that reason, the "principle that the legal effect of conduct should ordinarily be assessed under the law that existed when the conduct took place has timeless and universal appeal." *Kaiser,* 494 U.S., at 855, 110 S.Ct., at 1586 (SCALIA, J., concurring). In a free, dynamic society, creativity in both commercial and artistic endeavors is fostered by a rule of law that gives people confidence about the legal consequences of their actions.

FN18. See *General Motors Corp.* [redacted]. *Romein,* 503 U.S. 181, 191, 112 S.Ct. 1105, 1112, 117 L.Ed.2d 328 (1992) ("Retroactive legislation presents problems of unfairness that are more serious than those posed by prospective legislation, because it can deprive citizens of legitimate expectations and upset settled transactions"); [Further citations omitted].

It is therefore not surprising that the antiretroactivity principle finds expression in several provisions of our Constitution. The *Ex Post Facto* Clause flatly prohibits retroactive application of penal legislation.[FN19] Article I, § 10, cl. 1, prohibits States from passing another type of retroactive legislation, laws "impairing the Obligation of Contracts." The Fifth Amendment's Takings Clause prevents the Legislature (and other government actors) from depriving private persons of vested property rights except for a "public use" and upon payment of "just compensation." The prohibitions on "Bills of Attainder" in Art. I, §§ 9-10, prohibit legislatures from singling out disfavored persons and meting out summary punishment for past conduct. See, *e.g., United States* [redacted]. *Brown,* 381 U.S. 437, 456-462, 85 S.Ct. 1707, 1719-1722, 14 L.Ed.2d 484 (1965). The Due Process Clause also protects the interests in fair notice and repose that may be compromised by retroactive legislation; a justification sufficient to validate a statute's prospective application under the Clause "may not suffice" to warrant its retroactive application. *Usery* [redacted]. *Turner Elkhorn Mining Co.,* 428 U.S. 1, 17, 96 S.Ct. 2882, 2893, 49 L.Ed.2d 752 (1976).

FN19. Article I contains two *Ex Post Facto* Clauses, one directed to Congress (§ 9, cl. 3), the other to the States (§ 10, cl. 1). We have construed the Clauses as applicable only to penal legislation. See *Calder* [redacted]. *Bull,* 3 Dall. 386, 390-391, 1 L.Ed. 648 (1798) (opinion of Chase, J.).

These provisions demonstrate that retroactive statutes raise particular concerns. The Legislature's unmatched powers allow it to sweep away settled expectations suddenly and without individualized consideration. Its responsivity to political pressures poses a risk that it may be tempted to use retroactive legislation as a means of retribution against unpopular groups or individuals. As Justice Marshall observed in his opinion for **1498 the Court in *Weaver* [redacted]. *Graham,* 450 U.S. 24, 101 S.Ct. 960, 67 L.Ed.2d 17 (1981), the *Ex Post Facto* Clause not only ensures that individuals have "fair warning" about the effect of criminal statutes, but also "restricts governmental power by restraining arbitrary and potentially vindictive legislation." *Id.,* at 28-29, 101 S.Ct., at 963-964 (citations omitted). [FN20]

FN20. See *Richmond* [redacted]. *J. A. Croson Co.,* 488 U.S. 469, 513-514, 109 S.Ct. 706, 732, 102 L.Ed.2d 854 (1989) ("Legislatures are primarily policymaking bodies that promulgate rules to govern future conduct. The constitutional prohibitions against the enactment of *ex post facto* laws and bills of attainder reflect a valid concern about the use of the political process to punish or characterize past conduct of

> private citizens. It is the judicial system, rather than the legislative process, that is best equipped to identify past wrongdoers and to fashion remedies that will create the conditions that presumably would have existed had no wrong been committed") (STEVENS, J., concurring in part and concurring in judgment); *James* [redacted]. *United States,* 366 U.S. 213, 247, n. 3, 81 S.Ct. 1052, 1052, n. 3, 6 L.Ed.2d 246 (1961) (retroactive punitive measures may reflect "a purpose not to prevent dangerous conduct generally but to impose by legislation a penalty against specific persons or classes of persons").

These well entrenched constitutional protections and presumptions against retroactive application of legislation establish that 18 [redacted]. §2255 (2005) in effect at the time of the alleged conduct applies to the instant action, and not the amended version.

**B.** Not only is there no clear express intent stating that the statute is to apply retroactively, but applying the current version of the statute, as amended in 2006, would be in clear violation of the Ex Post Facto Clause of the United States Constitution as it would be applied to events occurring before its enactment and would increase the penalty or punishment for the alleged crime. U.S. Const. Art. 1, §9, cl. 3, §10, cl. 1. U.S. [redacted]. Seigel, 153 F.3d 1256 (11th Cir. 1998); U.S. [redacted]. Edwards, 162 F.3d 87 (3d Cir. 1998); and generally, Calder [redacted]. Bull, 3 U.S. 386, 390, 1 L.Ed. 648, 1798 WL 587 (*Calder*) (1798).

> The United States Constitution provides that "[n]o Bill of Attainder or ex post facto Law shall be passed" by Congress. U.S. Const. art. I, § 9, cl. 3. A law violates the Ex Post Facto Clause if it " 'appli[es] to events occurring before its enactment ... [and] disadvantage[s] the offender affected by it' by altering the definition of criminal conduct or increasing the punishment for the crime." Lynce [redacted]. Mathis, 519 U.S. 433, 117 S.Ct. 891, 137 L.Ed.2d 63 (1997) (quoting Weaver [redacted]. Graham, 450 U.S. 24, 29, 101 S.Ct. 960, 67 L.Ed.2d 17 (1981)).
>
> U.S. [redacted]. Siegel,153 F.3d 1256, 1259 (11th Cir. 1998).

§2255 is contained in Title 18 of the United States Codes - "Crimes and Criminal Procedure, Part I. Crimes, Chap. 110. Sexual Exploitation and Other Abuse of Children." 18 [redacted]. §2255 (2005), is entitled *Civil remedy for personal injuries*, and imposes a presumptive minimum of damages in the amount of $50,000, should Plaintiff prove any

violation of the specified criminal statutes and that she suffered personal injury and sustained actual damages. Thus, the effect of the 2006 amendments, effective July 27, 2006, would be to triple the amount of the statutory minimum previously in effect during the time of the alleged acts.

The statute, as amended in 2006, contains no language stating that the application is to be retroactive. Thus, there is no manifest intent that the statute is to apply retroactively, and, accordingly, the statute in effect during the time of the alleged conduct is to apply. Landgraf [redacted]. USI Film Products, supra, at 1493, ("A statement that a statute will become effective on a certain date does not even arguably suggest that it has any application to conduct that occurred at an earlier date.").

This statute was enacted as part of the Federal Criminal Statutes targeting sexual predators and sex crimes against children. H.R. 3494, "Child Protection and Sexual Predator Punishment Act of 1998;" House Report No. 105-557, 11, 1998 [redacted]. 678, 679 (1998). Quoting from the "Background and Need For Legislation" portion of the House Report No. 105-557, 11-16, H.R. 3494, of which 18 [redacted]. §2255 is included, is described as "the most comprehensive package of new crimes and increased penalties ever developed in response to crimes against children, particularly assaults facilitated by computers." Further showing that §2255 was enacted as a criminal penalty or punishment, "Title II – Punishing Sexual Predators," Sec. 206, from House Report No. 105-557, 5-6, specifically includes reference to the remedy created under §2255 as an additional means of punishing sexual predators, along with other penalties and punishments. Senatorial Comments in amending §2255 in 2006 confirm that the creation of the presumptive minimum damage amount is meant as an additional penalty against

those who sexually exploit or abuse children. 2006 WL 2034118, 152 Cong. Rec. S8012-02. Senator Kerry refers to the statutorily imposed damage amount as "penalties." Id.

The cases of U.S. [redacted]. Siegel, supra (11th Cir. 1998), and U.S. [redacted]. Edwards, supra (3d Cir. 1998), also support Defendant's position that application of the current version of 18 [redacted]. §2255 would be in clear violation of the Ex Post Facto Clause. In Siegel, the Eleventh Circuit found that the Ex Post Facto Clause barred application of the Mandatory Victim Restitution Act of 1996 (MVRA) to the defendant whose criminal conduct occurred before the effective date of the statute, 18 [redacted]. §3664(f)(1)(A), even though the guilty plea and sentencing proceeding occurred after the effective date of the statute. On July 19, 1996, the defendant Siegel pleaded guilty to various charges under 18 [redacted]. §371 and §1956(a)(1)(A), (conspiracy to commit mail and wire fraud, bank fraud, and laundering of money instruments; and money laundering). He was sentenced on March 7, 1997. As part of his sentence, Siegel was ordered to pay $1,207,000.00 in restitution under the MVRA which became effective on April 24, 1996. Pub.L. No. 104-132, 110 Stat. 1214, 1229-1236. The 1996 amendments to MVRA required that the district court must order restitution in the full amount of the victim's loss without consideration of the defendant's ability to pay. Prior to the enactment of the MVRA and under the former 18 [redacted]. §3664(a) of the Victim and Witness Protection Act of 1982 (VWPA), Pub.l. No. 97-291, 96 Stat. 1248, the court was required to consider, among other factors, the defendant's ability to pay in determining the amount of restitution.

When the MVRA was enacted in 1996, Congress stated that the amendments to the VWPA "shall, to the extent constitutionally permissible, be effective for sentencing proceedings in cases in which the defendant is convicted on or after the date of enactment

of this Act [Apr. 24, 1996]." Siegel, supra at 1258. The alleged crimes occurred between February, 1988 to May, 1990. The Court agreed with the defendant's position that 1996 MVRA "should not be applied in reviewing the validity of the court's restitution order because to do so would violate the Ex Post Facto Clause of the United States Constitution. See U.S. Const. art I, §9, cl. 3."

The Ex Post Facto analysis made by the Eleventh Circuit in Siegel is applicable to this action. In resolving the issue in favor of the defendant, the Court first considered whether a restitution order is a punishment. Id, at 1259. In determining that restitution was a punishment, the Court noted that §3663A(a)(1) of Title 18 expressly describes restitution as a "penalty." In addition, the Court also noted that "[a]lthough not in the context of an ex post facto determination, … restitution is a 'criminal penalty meant to have strong deterrent and rehabilitative effect.' United States [redacted]. Twitty, 107 F.3d 1482, 1493 n. 12 (11th Cir.1997)." Second, the Court considered "whether the imposition of restitution under the MVRA is an increased penalty as prohibited by the Ex Post Facto Clause." Id, at 1259. In determining that the application of the 1996 MVRA would indeed run afoul of the Constitution's Ex Post Facto Clause, the Court agreed with the majority of the Circuits that restitution under the 1996 MVRA was an increased penalty.[7] "The effect of the MVRA can be detrimental to a defendant. Previously, after considering the defendant's financial condition, the court had the discretion to order restitution in an amount less than the loss sustained by the victim. Under the MVRA, however, the court

[7] The Eleventh Circuit, in holding that "the MVRA cannot be applied to a person whose criminal conduct occurred prior to April 24, 1996," was "persuaded by the majority of districts on this issue." "Restitution is a criminal penalty carrying with it characteristics of criminal punishment." Siegel, supra at 1260. The Eleventh Circuit is in agreement with the Second, Third, Eighth, Ninth, and [redacted]. Circuits. See U.S. [redacted]. Futrell, 209 F.3d 1286, 1289-90 (11th Cir. 2000).

must order restitution to each victim in the full amount." Id, at 1260. See also U.S. [redacted]. Edwards, 162 F.2d 87 (3rd Circuit 1998).

In the instant case, in answering the first question, it is clear that that imposition of a minimum amount of damages, regardless of the amount of actual damages suffered by a minor victim, is meant to be a penalty or punishment. See statutory text and House Bill Reports, cited above herein, consistently referring to the presumptive minimum damages amount under §2255 as "punishment" or "penalties." According to the Ex Post Facto doctrine, although §2255 is labeled a "civil remedy," such label is not dispositive; "if the effect of the statute is to impose punishment that is criminal in nature, the ex post facto clause is implicated." *See generally*, Roman Catholic Bishop of Oakland [redacted]. Superior Court, 28 Cal.Rptr.3d 355, at 360, citing Kansas [redacted]. Hendricks, 521 U.S. 346, 360-61 (1997). The effect of applying the 2006 version of §2255 would be to triple the amount of the presumptive minimum damages to a minor who proves the elements of her §2255 claim. The fact that a plaintiff proceeding under §2255 has to prove a violation of a criminal statute and suffer personal injury to recover damages thereunder, further supports that the imposition of a minimum amount, regardless of a victim's actual damages sustained, is meant and was enacted as additional punishment or penalty for violation of criminal sexual exploitation and abuse of minors.

Accordingly, this Court is required to apply the statute in effect at the time of the alleged criminal acts. Not only is there no language in the 2006 statute stating that it is to apply retroactively, but further, such application of the 2006 version of 18 [redacted]. §2255 to acts that occurred prior to its effective date would have a detrimental and punitive

effect on Defendant by tripling the presumptive minimum of damages available to a plaintiff, regardless of the actual damages suffered.[8]

[redacted]. As discussed above, 18 [redacted]. §2255 was enacted as part of the criminal statutory scheme to punish and penalize those who sexually exploit and abuse minors, and thus, the Ex Post Fact Clause prohibits a retroactive application of the 2006 amended version. Even if one were to argue that the statute is "civil" and the damages thereunder are "civil" in nature, under the analysis provided by the United States Supreme Court in Landgraf [redacted]. USI Film Products, 511 U.S. 244, 114 S.Ct. 1483 (1994), pertaining to civil statutes, not only is there no express intent by Congress to apply the new statute to past conduct, but also, the clear effect of retroactive application of the statute would be to increase the potential liability for past conduct from a minimum of $50,000 to $150,000, and thus in violation of the constitutional prohibitions against such application. As noted, 18 [redacted]. §2255 is entitled "*Civil remedy for personal injuries.*" Notwithstanding this label, the statute was enacted as part of the criminal statutory scheme to punish those who sexually exploit and abuse minors. Regardless of the actual damages suffered or proven by a minor, as long as a minor proves violation of a specified statutory criminal act under §2255 and personal injury, the defendant is held liable for the statutory imposed minimum.

Notwithstanding the above legal analysis, in the recent case of Individual Known to Defendant As 08MIST096.JPG and 08mist067.jpg [redacted]. Falso, 2009 WL 4807537 (N.D. N.Y. Dec. 9, 2009), United States District Court for the Northern District of New York

[8] Plaintiff has attempted to allege 6 counts pursuant to 18 [redacted]. §2255. If it is Plaintiff's position that she is entitled to the minimum damage amount on each count, regardless of her actual damages, the absurdity of a retroactive application is more magnified. Clearly, the result is an unconstitutional increase in either a penalty or civil liability.

addressed the issue of whether §2255 is a civil or criminal statute for purposes of the constitutional prohibition against double jeopardy. The New York Court stated that "looking to the plain language of §2255(a), it is clear that the statutory intent was to provide a civil remedy. This is exemplified by the title … and the fact that the statute aims to provide compensation to individuals who suffered personal injury as a result of criminal conduct against them." The New York Court in analyzing whether §2255 violated the Constitutional prohibition against double jeopardy, concluded that although the behavior to which §2255 is criminal, it did not find that the "primary aim" was "retribution and deterrence." "The statute serves civil goals." The "primary aim" is "the compensation for personal injuries sustained as a result of criminal conduct."

Therefore, because [redacted] Doe 103 has invoked the provisions of the criminal Non-Prosecution Agreement (NPA) between EPSTEIN and USAO (see paragraphs 25 and 26 of complaint), plaintiff cannot avoid the full protection of the rule of lenity and due process to which EPSTEIN is entitled in the context of these unique factual circumstances.

Although there does not exist any definitive ruling of whether the damages awarded under §2255 are meant as criminal punishment or a civil damages award, Defendant is still entitled to a determination as a matter of law that the statute in effect at the time of the alleged criminal conduct applies.

As explained by the Landgraf court, supra at 280, and at 1505,[9]

[9] In Landgraf, the United States Supreme Court affirmed the judgment of the Court of Appeals and refused to apply new provisions of the Civil Rights Act of 1991 to conduct occurring before the effective date of the Act. The Court determined that statutory text in question, §102, was subject to the presumption against statutory retroactivity.

> When a case implicates a federal statute enacted after the events in suit, the court's first task is to determine whether Congress has expressly prescribed the statute's proper reach. If Congress has done so, of course, there is no need to resort to judicial default rules. When, however, the statute contains no such express command, the court must determine whether the new statute would have retroactive effect, *i.e.,* whether it would impair rights a party possessed when he acted, increase a party's liability for past conduct, or impose new duties with respect to transactions already completed. If the statute would operate retroactively, our traditional presumption teaches that it does not govern absent clear congressional intent favoring such a result.

Here, there is no clear expression of intent regarding the 2006 Act's application to conduct occurring well before its enactment. Clearly, however, as discussed in part B herein, the presumptive minimum amount of damages of $150,000 was enacted as a punishment or penalty upon those who sexually exploit and abuse minors. See discussion of House Bill Reports and Congressional background above herein. The amount triples the previous amount for which a defendant might be found liable, regardless of the amount of actual damages a plaintiff has suffered and proven. The new statute imposes a substantial increase in the monetary liability for past conduct.

As stated in Landgraf, "the extent of a party's liability, in the civil context as well as the criminal, is an important legal consequence that cannot be ignored." Courts have consistently refused to apply a statute which substantially increases a party's liability to conduct occurring before the statute's enactment. Landgraf, supra at 284-85. Even if plaintiff were to argue that retroactive application of the new statute "would vindicate its purpose more fully," even that consideration is not enough to rebut the presumption against retroactivity. Id, at 285-86. "The presumption against statutory retroactivity is founded upon sound considerations of general policy and practice, and accords with long held and widely shared expectations about the usual operation of legislation." Id.

Thus, Plaintiff's action should be dismissed and she should be required to plead her action under the applicable version of 18 [redacted]. §2255.

**Motion For More Definite Statement and To Strike, Rule 12(e) and (f), [redacted].**

As noted above, Plaintiff alleges that she was 17 year old high school student as of January, 2004, and that the alleged conduct involving EPSTEIN occurred "between approximately January 2004 and May 2005. Thus, Plaintiff had to be 18 (no longer a minor) by January of 2005. Under the principles of statutory construction, the language of §2255(a) is clear – "Any **minor** who is a victim of a violation of section …of this title and who suffers personal injury as a result of such violation may sue in any appropriate United States District Court and **shall recover the actual damages such minor sustains** and the cost of the suit, including a reasonable attorney's fee. **Any minor** as described in the preceding sentence shall be deemed to have sustained damages of no less than $50,000 in value."

As Plaintiff's date of birth is significant to her §2255 claim, she should be required to more definitely state her date of birth so that Defendant and this Court are able to determine precisely when she reached the age of majority. (The age of majority under both federal and state law is 18 years old. See 18 [redacted]. §2256(1), defining a "minor" as "any person under the age of eighteen years;" and §1.01, *Definitions,* Fla. Stat., defining "minor" to include "any person who has not attained the age of 18 years.") In addition, when Plaintiff reached the age of majority may impact her ability to even assert a §2255 claim. See §2255(b).

To the extent that Plaintiff is relying on any alleged conduct that occurred after her 18 birthday as an element of her §2255 claim, such allegations should be stricken as immaterial and she should be required to more definitely state the dates of the alleged conduct. See Rule 12(f). Defendant also seeks to strike ¶¶10, 11, 12, 13, 14, 15, and 16,

of Plaintiff's Complaint as immaterial and impertinent. None of the allegations in those paragraphs specifically pertain to the Plaintiff. Not until ¶17 does Plaintiff assert allegations pertaining to her and the conduct of Defendant directly involving her. What EPSTEIN may or may not have allegedly done with respect to other alleged girls does not effect Plaintiff's claim brought pursuant to §2255. The allegations in ¶¶10-16 are not related to the elements of Plaintiff's §2255 claim and, thus, are required to be stricken.

**Conclusion**

Pursuant to the above, Plaintiff entire action is required to be dismissed. 18 [redacted]. §2255 allows for a single recovery of the actual damages sustained in proven; neither the "actual damages" sustained not the statutory minimum is subject to duplication or multiplication on a per violation or per count or per incident basis. Also, the statute in effect during the time of the alleged conduct applies, not the version as amended, effective July 27, 2006. Count VI is also required to be dismissed as it relies on a statutory predicate act that did not take effect until 2006. In addition, Plaintiff should be required to more definitely state her date of birth, and any conduct occurring after her 18th birthday should be stricken, and ¶¶10 – 16 of the Complaint should also be stricken.

WHEREFORE, Defendant requests that this Court dismiss the entire action against him, and further grant his motion for more definite statement and to strike.

Robert D. Critton, Esq.
Attorney for Defendant

**Certificate of Service**

I HEREBY CERTIFY that a true copy of the foregoing was electronically filed with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is

being served this day on all counsel of record identified on the following Service List in the manner specified by CM/ECF on this ___ day of _____, 2010.

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[1] **18 USCA §2255 (1999-July 26, 2006):**

PART I--CRIMES
CHAPTER 110--SEXUAL EXPLOITATION AND OTHER ABUSE OF CHILDREN
§ 2255. Civil remedy for personal injuries

**(a)** Any minor who is a victim of a violation of section 2241([redacted]), 2242, 2243, 2251, 2251A, 2252, 2252A, 2260, 2421, 2422, or 2423 of this title

and who suffers personal injury as a result of such violation may sue in any appropriate United States District Court and shall recover the actual damages such minor sustains and the cost of the suit, including a reasonable attorney's fee. Any minor as described in the preceding sentence shall be deemed to have sustained damages of no less than $50,000 in value.

**(b)** Any action commenced under this section shall be barred unless the complaint is filed within six years after the right of action first accrues or in the case of a person under a legal disability, not later than three years after the disability.

CREDIT(S)
(Added Pub.L. 99-500, Title I, § 101(b) [Title VII, § 703(a)], Oct. 18, 1986, 100 Stat. 1783-75, and amended Pub.L. 99-591, Title I, § 101(b) [Title VII, § 703(a)], Oct. 30, 1986, 100 Stat. 3341-75; Pub.L. 105-314, Title VI, § 605, Oct. 30, 1998, 112 Stat. 2984.)

**18 [redacted]. §2255, as amended 2006, Effective July 27, 2006:**
PART I--CRIMES
CHAPTER 110--SEXUAL EXPLOITATION AND OTHER ABUSE OF CHILDREN

**§ 2255. Civil remedy for personal injuries**

**(a) In general.**--Any person who, while a minor, was a victim of a violation of section 2241([redacted]), 2242, 2243, 2251, 2251A, 2252, 2252A, 2260, 2421, 2422, or 2423 of this title and who suffers personal injury as a result of such violation, regardless of whether the injury occurred while such person was a minor, may sue in any appropriate United States District Court and shall recover the actual damages such person sustains and the cost of the suit, including a reasonable attorney's fee. Any person as described in the preceding sentence shall be deemed to have sustained damages of no less than $150,000 in value.

**(b) Statute of limitations.**--Any action commenced under this section shall be barred unless the complaint is filed within six years after the right of action first accrues or in the case of a person under a legal disability, not later than three years after the disability.

CREDIT(S)
(Added Pub.L. 99-500, Title I, § 101(b) [Title VII, § 703(a)], Oct. 18, 1986, 100 Stat. 1783-75, and amended Pub.L. 99-591, Title I, § 101(b) [Title VII, § 703(a)], Oct. 30, 1986, 100 Stat. 3341-75; Pub.L. 105-314, Title VI, § 605,

Oct. 30, 1998, 112 Stat. 2984; Pub.L. 109-248, Title VII, § 707(b), ([redacted]), July 27, 2006, 120 Stat. 650.)

[2] Paragraphs 30, 34, 38, 43, 48, and 52 of Plaintiff's Complaint alleges:

30. As a direct and proximate result of the offenses enumerated in 18 [redacted]. §2255 being committed against the then minor Plaintiff by Defendant, Plaintiff has in the past suffered, and will in the future continue to suffer, physical injury, pain and suffering, emotional distress, psychological and/or psychiatric trauma, mental anguish, humiliation, confusion, embarrassment, loss of educational opportunities, loss of self-esteem, loss of dignity, invasion of her privacy, separation from her family, and other damages associated with Defendant manipulating and leading her into a perverse and unhealthy way of life. The then minor Plaintiff incurred medical and psychological expenses, and Plaintiff will in the future suffer additional medical and psychological expenses. Plaintiff has suffered a loss of income, a loss of the capacity to earn income in the future, and a loss of the capacity to enjoy life. These injuries are permanent in nature, and Plaintiff will continue to suffer these losses in the future.

* * * * *

The "Wherefore" clauses in each of the six counts are also identical –

WHEREFORE Plaintiff demands judgment against Defendant for all damages available under 18 [redacted]. §2255, including, without limitation, actual and compensatory damages, attorney's fees, costs of suit, and such other relief this Court deems just and proper, and hereby demands trial by jury on all issues triable as of right by a jury.