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

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

[redacted]

March 29, 2010

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

[redacted]
Assistant United States Attorney
500 South Australian Avenue
West Palm Beach, FL 33401-6223

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

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 Jane 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 Jane 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 Jane 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-

JANE DOE No. 103,

Plaintiff,

vs.

JEFFERY EPSTEIN,

Defendant.
_____/

DEFENDANT EPSTEIN'S MOTION TO DISMISS, & FOR MORE DEFINITE STATEMENT & STRIKE DIRECTED TO PLAINTIFF JANE 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 JANE 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 U.S.C. §2255 – *Civil Remedies for Personal Injuries*. Dismissal is required on the following grounds: (1) 18 U.S.C.A. §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. v. Prime Time 24 Venture, 245 F.3d 1217 (11th Cir. 2001); U.S. v. Castroneves, 2009 WL 528251, *3 (S.D. Fla. 2009), citing Reeves v. Astrue, 526 F.3d 732, 734 (11th Cir. 2008); and Smith v. 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 '[c]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 v. U.S., 125 S.Ct. 2478 (2005); 73 Am.Jur.2d *Statutes* §124.

Title 18 of the U.S.C. is entitled "Crimes and Criminal Procedure." §2255 is contained in "Part I. Crimes, Chap. 110. Sexual Exploitation and Other Abuse of Children." 18 U.S.C. §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(c), 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]

[1] The above quoted version of 18 U.S.C. §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 U.S.C. §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 U.S.C.A. §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 U.S.C. §2255 gives victims of sexual conduct who are minors a private right of action." Martinez v. White, 492 F.Supp.2d 1186, 1188 (N.D. Cal. 2007). 18 U.S.C.A. §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

[2] In other §2255 actions filed against Defendant, Defendant has previously asserted the position that 18 U.S.C. §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 Jane 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 Jane Doe 103, a waiver sufficient to satisfy the 2255 statutory condition that Jane 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 U.S.C. 2255(a) creates a civil remedy for "a minor who is a victim of a violation of section 2241(c), 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 U.S.C. §2255(a) (2002). See Smith v. Husband, 428 F.Supp.2d 432 (E.D. Va. 2006); Smith v. Husband, 376 F.Supp.2d 603 (E.D. Va. 2006); Doe v. 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 v. Epstein, 2009 WL 383332 (S.D. Fla. Feb. 12, 2009); Doe No. 3 v. Epstein, 2009 WL 383330 (S.D. Fla. Feb. 12, 2009); Doe No. 4 v. Epstein, 2009 WL 383286 (S.D. Fla. Feb. 12, 2009); and Doe No. 5 v. Epstein, 2009 WL 383383 (S.D. Fla. Feb. 12, 2009); see also U.S. v. Scheidt, Slip Copy, 2010 WL 144837, fn. 1 (E.D.Cal. Jan. 11, 2010); U.S. v. Renga, 2009 WL 2579103, fn. 1 (E.D. Cal. Aug. 19, 2009); U.S. v. Ferenci, 2009 WL 2579102, fn. 1 (E.D. Cal. Aug. 19, 2009); U.S. v. Monk, 2009 WL 2567831, fn. 1 (E.D. Cal. Aug. 18, 2009); U.S. v. Zane, 2009 WL 2567832, fn.1 (E.D. Cal. Aug. 18 2009).

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

[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 U.S.C. §1821(e)(3)(i). In doing so, the Court began with the plain meaning of the phrase. *See* Perrin v. 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 v. 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 C.J.S. Damages § 2 (1966).
>
> (**Emphasis** added).

See also, Fanin v. U.S. Dept. of Veteran Affairs, 2009 WL 1677233 (11th Cir. June 17, 2009), citing Fitzpatrick v. IRS, 665 F.2d 327, 331 (11th Cir. 1982), *abrogated on other grounds by* Doe v. 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, E.E.O.C. v. Waffle House, Inc., 534 U.S.

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. v. 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 U.S.C. §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.

[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 U.S.C. §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 U.S.C. §2255 does not include such language.

B. Constitutional Considerations.[5] As set forth above, it is Defendant's position that the text of 18 U.S.C. §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 v. 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 v. Gradwell,* 243 U.S. 476, 485, 37 S.Ct. 407, 61 L.Ed. 857 (1917); *McBoyle v. United States,* 283 U.S. 25, 27, 51 S.Ct. 340, 75 L.Ed. 816 (1931); *United States v. 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 U.S.C. §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 v. 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 v. 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 v. 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 v. 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 U.S.C. §2255, such reliance is improper and requires dismissal of the entire action. It is Defendant's position that 18 U.S.C. §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 U.S.C. §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 U.S.C. §2252A(g)(2), in violation of 18 U.S.C. §2252A(g)(1)." §2252A is one of the specified predicate acts under 18 U.S.C. §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 U.S.C. §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 U.S.C. §2255 applies.

Under applicable law, the statute in effect at the time of the alleged conduct applies. See U.S. v. Scheidt, Slip Copy, 2010 WL 144837, fn. 1 (E.D.Cal. Jan. 11, 2010); U.S. v. Renga, 2009 WL 2579103, fn. 1 (E.D. Cal. Aug. 19, 2009); U.S. v. Ferenci, 2009 WL 2579102, fn. 1 (E.D. Cal. Aug. 19, 2009); U.S. v. Monk, 2009 WL 2567831, fn. 1 (E.D. Cal. Aug. 18, 2009); U.S. v. 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 v. 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. v. 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 v. 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 v. 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 v. 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 v. 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 v. 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 v. 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 U.S.C. §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. v. Seigel, 153 F.3d 1256 (11th Cir. 1998); U.S. v. Edwards, 162 F.3d 87 (3d Cir. 1998); and generally, Calder v. 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 v. Mathis, 519 U.S. 433, 117 S.Ct. 891, 137 L.Ed.2d 63 (1997) (quoting Weaver v. Graham, 450 U.S. 24, 29, 101 S.Ct. 960, 67 L.Ed.2d 17 (1981)).

U.S. v. 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 U.S.C. §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 v. 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 U.S.C.A.N. 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 U.S.C. §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. v. Siegel, supra (11th Cir. 1998), and U.S. v. Edwards, supra (3d Cir. 1998), also support Defendant's position that application of the current version of 18 U.S.C. §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 U.S.C. §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 U.S.C. §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 U.S.C. §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 v. 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 D.C. Circuits. See U.S. v. 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. v. 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 v. Superior Court, 28 Cal.Rptr.3d 355, at 360, citing Kansas v. 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 U.S.C. §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]

C. As discussed above, 18 U.S.C. §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 v. 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 U.S.C. §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 v. 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 U.S.C. §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 Jane 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 U.S.C. §2255.

Motion For More Definite Statement and To Strike, Rule 12(e) and (f), F.R.C.P.

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 U.S.C. §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 U.S.C. §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.

Robert C. Josefsberg, Esq.
Katherine W. Ezell, Esq.
Podhurst Orseck, P.A.
25 West Flagler Street, Suite 800
Miami, FL 33130
[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
[redacted]
Counsel for Defendant Jeffrey Epstein

Respectfully submitted,

By: _____
ROBERT D. CRITTON, JR., ESQ.
[redacted]
MICHAEL J. PIKE, ESQ.
[redacted]
BURMAN, CRITTON, LUTTIER & COLEMAN
515 N. Flagler Drive, Suite 400
West Palm Beach, FL 33401
[redacted]
(*Counsel for Defendant Jeffrey Epstein)*

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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(c), 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 U.S.C. §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(c), 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), (c), 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 U.S.C. §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 U.S.C. §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.