

FILED by *VT* D.C.
ELECTRONIC
February 6, 2008
CLARENCE MADDOX
CLERK U.S. DIST. CT.
S. D. OF FLA. - MIAMI

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.:

08-CV-80119-MARRA-JOHNSON

JANE DOE NO. 2,

Plaintiff,

vs.

JEFFREY EPSTEIN,

Defendant.

COMPLAINT

Plaintiff, Jane Doe No. 2 ("Jane" or "Jane Doe"), brings this Complaint against Jeffrey Epstein, as follows:

Parties, Jurisdiction and Venue

1. Jane Doe No. 2 is a citizen and resident of the Commonwealth of Virginia, 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.
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 U.S.C. §1332(a), as the matter in controversy (i) exceeds \$75,000, exclusive of interest and costs; and (ii) is between citizens of different states.
6. This Court has venue of this action pursuant to 28 U.S.C. §1391(a) as a substantial

HERMAN & MERMELSTEIN, P. A.

www.hermanlaw.com

part of the events or omissions giving rise to the claim occurred in this District.

Factual Allegations

7. At all relevant times, Defendant Jeffrey Epstein ("Epstein") was an adult male, 52 years old. 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.

8. 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 2004-2005, Jane Doe, then approximately 16 years old, fell into Epstein's trap and became one of his victims.

9. 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.

10. Epstein's scheme involved the use of young girls to recruit underage girls. (Upon information and belief, the young girl who brought Jane Doe to Epstein was herself a minor victim of Epstein, and will therefore not be named in this Complaint). Under Epstein's plan, underage girls were recruited ostensibly to give a wealthy man a massage for monetary compensation in his Palm Beach mansion. The recruiter would be contacted when Epstein was planning to be at his Palm Beach residence or soon after he had arrived there. Epstein or someone on his behalf would direct the recruiter to bring one or more underage girls to the residence. The recruiter, upon information and belief, generally sought out economically disadvantaged underage girls from western 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. This was an important element of Epstein's plan.

11. Epstein's plan and scheme reflected a particular pattern and method. Upon arrival at Epstein's mansion, the underage victim would be introduced to Sarah Kellen, Epstein's assistant, who gathered the girl's personal information, including her name and telephone number. Ms. Kellen would then bring the girl up a flight of stairs to a bedroom that contained a massage table in addition to other furnishings. There were photographs of nude women lining the stairway hall and in the bedroom. 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, including masturbation and touching the girl's vagina.

12. Consistent with the foregoing plan and scheme, Jane Doe was recruited to give Epstein a massage for monetary compensation. Jane was brought to Epstein's mansion in Palm Beach. Once at the mansion, Jane was introduced to Sarah Kellen, who led her up the flight of stairs to the room with the massage table. In this room, Epstein told Jane to take off her clothes and give him a massage. Jane kept her panties and bra on and complied with Epstein's instructions. Epstein wore only a towel around his waste. After a short period of time, Epstein removed the towel and rolled over exposing his penis. Epstein began to masturbate and he sexually assaulted Jane.

13. After Epstein had completed the assault, Jane was then able to get dressed, leave the room and go back down the stairs. Jane was paid \$200 by Epstein. The young girl who recruited Jane was paid \$100 by Epstein for bringing Jane to him.

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

COUNT I
Sexual Assault

15. Plaintiff Jane Doe repeats and realleges paragraphs 1 through 14 above.

16. Epstein tortiously assaulted Jane Doe sexually. Epstein's acts were intentional, unlawful, offensive and harmful.

17. Epstein's plan and scheme in which he committed such acts upon Jane Doe were done willfully and maliciously.

18. This sexual assault was in violation of Chapter 800 of the Florida Statutes, which recognizes as a crime the lewd and lascivious acts committed by Epstein upon Jane.

19. As a direct and proximate result of Epstein's assault on Jane, she has suffered and will continue to suffer severe and permanent traumatic injuries, including mental, psychological and emotional damages.

WHEREFORE, Plaintiff Jane Doe No. 2 demands judgment against Defendant Jeffrey Epstein for compensatory damages, punitive damages, costs, and such other and further relief as this Court deems just and proper.

COUNT II
Intentional Infliction of Emotional Distress

20. Plaintiff Jane Doe repeats and realleges paragraphs 1 through 14 above.

21. Epstein's conduct was intentional or reckless.

22. Epstein's conduct was outrageous, going beyond all bounds of decency.

23. Epstein's conduct caused severe emotional distress to Jane Doe. Epstein knew or had

reason to know that his intentional and outrageous conduct would cause emotional trauma and damage to Jane Doe.

24. As a direct and proximate result of Epstein's intentional or reckless conduct, Jane Doe, has suffered and will continue to suffer severe mental anguish and pain.

WHEREFORE, Plaintiff Jane Doe No. 2 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.

JURY TRIAL DEMAND

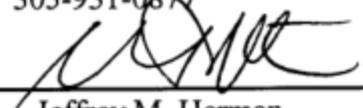
Plaintiffs demand a jury trial in this action.

Dated: February 5, 2008

Respectfully submitted,

HERMAN & MERMELSTEIN, P.A.
Attorneys for Plaintiffs
18205 Biscayne Blvd.
Suite 2218
Miami, Florida 33160
Tel: 305-931-2200
Fax: 305-931-0877

By: _____


Jeffrey M. Herman
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smermelstein@hermanlaw.com
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Adam D. Horowitz
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ahorowitz@hermanlaw.com

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing, and service of pleading 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 the Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

(a) PLAINTIFFS JANE DOE NO. 2,	DEFENDANTS JEFFREY EPSTEIN
(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF OUT OF STATE (EXCEPT IN U.S. PLAINTIFF CASES)	COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT NEW YORK (IN U.S. PLAINTIFF CASES ONLY)
(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER) Herman & Mermelstein, P.A., 18205 Biscayne Blvd., Suite 2218, Miami, FL 33160, (305) 931-2200	ATTORNEYS (IF KNOWN)
(d) CIRCLE COUNTY WHERE ACTION AROSE: PALM BEACH	

9:08CV 80119-KAM-Johnson

II. BASIS OF JURISDICTION (PLACE AN X ONE BOX ONLY)	III. CITIZENSHIP OF PRINCIPAL PARTIES (For Diversity Case Only)	PLACE AN X IN ONE BOX FOR PLAINTIFF AND ONE FOR DEFENDANT Incorporated for Principal Place of
<input type="checkbox"/> 1. U.S. Government Plaintiff <input type="checkbox"/> 2. U.S. Government Defendant (Indicate Citizenship of Parties in Item III)	<input type="checkbox"/> 3. Federal Question (U.S. Government Not a Party) <input checked="" type="checkbox"/> 4. Diversity Citizen of This State Citizen of Another State Citizen or Subject of a Foreign Country	PTF DEF <input type="checkbox"/> 1 <input type="checkbox"/> 1 <input checked="" type="checkbox"/> 2 <input checked="" type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 3 <input type="checkbox"/> 4 <input type="checkbox"/> 4 <input type="checkbox"/> 5 <input type="checkbox"/> 5 <input type="checkbox"/> 6 <input type="checkbox"/> 6

IV. 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.)
DIVERSITY ACTION UNDER 28 U.S.C. §1332(a) FOR SEXUAL ASSAULT

Iva. 5 days estimated (for both sides) to try entire case

V. NATURE OF SUIT (PLACE AN X IN ONE BOX ONLY)

A CONTRACT <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) B <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits B <input type="checkbox"/> 160 Stockholder's Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	A TORTS PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input checked="" type="checkbox"/> 380 Other Personal Injury <input type="checkbox"/> 362 Personal Injury-Med Malpractice <input type="checkbox"/> 365 Personal Injury-Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending B <input type="checkbox"/> 380 Other Personnel Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	B FORFEITURE PENALTY <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	A BANKRUPTCY <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 A PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark B SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DRWC/DRWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	A OTHER STATUS <input type="checkbox"/> 406 Status Reappointment <input type="checkbox"/> 410 Artist's <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/CC Rates/etc. B <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/ Commodities/ Exchange <input type="checkbox"/> 875 Customer Challenge 12USC3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions* *A or B Declaratory relief and state law claims for defamation
A REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure B <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	A CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	B PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus <input type="checkbox"/> 530 General* <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other* <input type="checkbox"/> 550 Civil Rights *A or B	A LABOR <input checked="" type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor Management Relations B <input type="checkbox"/> 730 Labor Management Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Ret. Inc. Security Act B	A FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS-Third Party 26 USC 7609

VI. ORIGIN
 x 1. Original Proceeding 2. Removed from State Court 3. Remanded from Appellate Court (Specify) 4. Refiled Appeal to District Judge from Magistrate Judgment 5. Transferred from another district 6. Multidistrict Litigation

FILED by INTAKE
 FEB - 6 2008
 CLARENCE MADDOX
 CLERK U.S. DIST. CT.
 S.D. OF FLA. - 5th LAND

VII. REQUESTED IN COMPLAINT CHECK IF THIS IS A UNDER F.R.C.P. 23 CLASS ACTION DEMAND \$ _____ Check YES only if demanded in complaint: **JURY DEMAND:** YES NO

VIII. RELATED CASE(S) IF ANY (See Instructions): (SEE ATTACHED) JUDGE _____ DOCKET NUMBER _____

DATE Feb. 5, 2008 SIGNATURE OF ATTORNEY OF RECORD

UNITED STATES DISTRICT COURT S/F 1-2 REV. 9/94 FOR OFFICE USE ONLY: Receipt No. _____ Amount: 350
 Date Paid: _____ M/ftp: _____

542215

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 08-CV-80119-MARRA-JOHNSON

JANE DOE NO. 2,

Plaintiff,

vs.

JEFFREY EPSTEIN,

Defendant.

DEFENDANT'S MOTION FOR STAY

Defendant Jeffrey Epstein respectfully moves for a mandatory stay of this action under Title 18, United States Code, Section 3509(k). As discussed below, this action is subject to a mandatory stay based on the existence of two pending parallel criminal actions.

Introduction

This civil action is a private counterpart to two ongoing criminal actions, one in Palm Beach state court, the other in Miami federal court. Both cases purport to arise from the same occurrence: the alleged sexual assault of a minor, Jane Doe No. 2. A federal statute directly on point provides that when an alleged sexual assault involving a child victim results in a "criminal proceeding," a commonly

derived civil suit “*shall be stayed* until the end of all phases of the criminal action.” 18 U.S.C. § 3509(k) (emphasis added).¹ A stay of this case is required until there is no longer a pending criminal action derived from the same underlying allegations. *See* 18 U.S.C. § 3509(k).

Discussion

The parallel state criminal action pending in Palm Beach Circuit Court is still in the discovery phase. *State of Florida v. Jeffrey Epstein*, Case No. 2006 CF 09454 AXX (Fifteenth Judicial Circuit, Palm Beach County). Meanwhile, there is also a parallel federal criminal grand jury action pending in the Southern District of Florida. *In re Grand Jury*, No. FGJ 07-103(WPB) (S.D. Fla.) Both cases arise out of the same occurrence and allege that the minor plaintiff is a victim.

The language of section 3509(k) of title 18, United States Code, is clear: a parallel “civil action *shall be stayed* until the end of all phases of the criminal

¹ The full text of the mandatory-stay provision reads:

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

18 U.S.C. § 3509(k).

action.” 18 U.S.C. § 3509(k) (emphasis added). When it comes to statutory construction, the mandatory nature of the word “*shall*” is well-settled. *See, e.g., Lopez v. Davis*, 531 U.S. 230, 241 (2001) (noting Congress’ “use of a mandatory ‘shall’ to impose *discretionless obligations*”) (emphasis added); *Lexecon Inc. v. Milberg Weiss Bershad Hynes & Lerach*, 523 U.S. 26, 35 (1998) (explaining that “the mandatory ‘shall’ . . . normally creates an obligation *impervious to judicial discretion*”) (emphasis added). *Cf. Miller v. French*, 530 U.S. 327, 350 (2000) (“Through the PLRA [Prison Litigation Reform Act], Congress clearly intended to make operation of the automatic stay *mandatory*, precluding courts from exercising their equitable powers to enjoin the stay. And we conclude that this provision does not violate separation of powers principles.”) (emphasis added).

One district court within the Eleventh Circuit, facing the identical issue with a pending state prosecution, recently construed “the plain language of § 3509(k)” as “*requir[ing] a stay* in a case . . . where . . . a parallel criminal action [is] pending.” *Doe v. Francis*, No. 5:03 CV 260 MCR/WCS, 2005 WL 950623, at *2 (N.D. Fla. Apr. 20, 2005) (*Francis II*) (emphasis added). *Accord Doe v. Francis*, No. 5:03 CV 260 MCR/WCS, 2005 WL 517847, at *1–2 (N.D. Fla. Feb. 10, 2005) (*Francis I*) (staying federal civil action in favor of “a criminal case currently pending in state court in Bay County, Florida, arising from the same facts and involving the same parties as the Instant action,” noting that “the language of 18

U.S.C. § 3509(k) is clear that *a stay is required* in a case such as this where a parallel criminal action is pending which arises from the same occurrence involving minor victims”) (emphasis added). There is no contrary opinion from any court.

In determining that the federal stay provision is mandatory, the *Francis II* court expressed that there was apparently no case law supporting, or even “discussing the [avoidance] of a stay [under the command of] § 3509(k).” *Francis II*, 2005 WL 950623, at *2. Deferring to the statute as written, the *Francis II* court rejected the plaintiffs’ argument that some of the alleged victims had already reached their majority. *See id.* The court similarly rejected the plaintiffs’ argument that it would be in the victims’ best interests to avoid a stay so as to counteract the victims’ “ongoing and increasing mental harm due to the ‘frustrating delay in both the criminal case and [the civil] case.’” *Id.* The *Francis II* court, in adhering to the plain language of the statute, also adhered to the “well established priority of criminal proceedings over civil proceedings.” *Cf. United States v. Hanhardt*, 156 F. Supp. 2d 988, 1000 (N.D. Ill. 2001) (citing Fed. R. Crim. P. 50(a)).

Conclusion

Because this civil action arises from the same allegations as two pending criminal actions, § 3509(k) mandates a stay of this civil action.

WHEREFORE, Defendant Jeffrey Epstein respectfully requests that the Court enter a stay under 18 U.S.C. § 3509(k), coextensive with the state and federal criminal actions.

Respectfully submitted,

ATTERBURY, GOLDBERGER &
WEISS, P.A.

250 Australian Avenue South, Suite 1400
West Palm Beach, Florida 33401
Tel: 561 659 8300
Fax: 561 835 8691

By: /s/ Jack A. Goldberger
Jack A. Goldberger
Fla. Bar No. 262013
jgoldberger@agwpa.com

Attorneys for Defendant Jeffrey Epstein

CERTIFICATE OF COMPLIANCE WITH LOCAL RULE 7

Counsel for defendant has conferred in good faith with counsel for the plaintiff, who opposes the relief requested in this motion.

/s/ Jack A. Goldberger
Jack A. Goldberger

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on June 20, 2008, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on counsel of record identified below by facsimile and U.S. Mail.

Jeffrey M. Herman, Esq.
Stuart S. Mermelstein, Esq.
Adam D. Horowitz, Esq.
Herman & Mermelstein, P.A.
18205 Biscayne Blvd, Suite 2218
Miami, Florida 33160
Fax: 305 931 0877

/s/ Jack A. Goldberger
Jack A. Goldberger

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 08-CV-80119-MARRA-JOHNSON

JANE DOE NO. 2,

Plaintiff,

vs.

JEFFREY EPSTEIN,

Defendant.

DEFENDANT'S NOTICE CONCERNING MOTION TO STAY [DE 12]

In connection with his motion to stay this action [DE 12], Defendant Jeffrey Epstein hereby notifies the Court that the State Court action, *State of Florida v. Jeffrey Epstein*, Case No. 2006 CF 09454 AXX (Fifteenth Judicial Circuit, Palm Beach County), was resolved on June 30, 2008. *See* Final Disposition sheets, attached hereto as Exhibit A. The federal criminal proceeding, however, remains pending.

Respectfully submitted,

ATTERBURY, GOLDBERGER &
WEISS, P.A.

250 Australian Avenue South, Suite 1400
West Palm Beach, Florida 33401
Tel: 561 659 8300
Fax: 561 835 8691

By: /s/ Jack A. Goldberger
Jack A. Goldberger
Fla. Bar No. 262013
jgoldberger@agwpa.com

Attorneys for Defendant Jeffrey Epstein

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on July 1, 2008, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on counsel of record identified below by facsimile and U.S. Mail.

Jeffrey M. Herman, Esq.
Stuart S. Mermelstein, Esq.
Adam D. Horowitz, Esq.
Herman & Mermelstein, P.A.
18205 Biscayne Blvd, Suite 2218
Miami, Florida 33160
Fax: 305 931 0877

/s/ Jack A. Goldberger
Jack A. Goldberger

EXHIBIT A

DIV: 1
CASE NO: 50200603007454AXXX ST OF FL VS. JEFFREY E. EPSTEIN 241

CHARGE: FELONY OFFER TO COMMIT PROSTITUTION

ARREST # 20060241 BIRTH# 00073142 TYPE/FE 3,000.00

Date: 3/10/08 6/3/08 Judge: TULLO Cr. Rep. C. DRAVOS

ASA: L. BELLAUER DC: MJD Int: Esq./PD/Pres/Not Pres.

Deft--Pres/Not Pres. W/W/O Def. Co. GOLDBERG Before the Court for: STATUSCHECK

Granted Denied With/Without Prejudice Withdrawn Court Reserves Ruling Written Order to Follow

Warrant Ordered Recalled Bond Set at \$ See Below Also Covers Sp Cond

Bond Forf OR: Disch/Revoked/Reinstated Bond: Disch/Revoked SOR: Disch/Revoked/Reinstated

Bond Forf Vacated Previous Bond Reinstated, if Bondsman agrees State failed to file charges Released O.R. / S.O.R.

Deft Indigent PD Appt Hrg only PD Pres Court Appts

Evaluation for: Drug Farm DOC Non-Secure Bed by Pre-Plea PSI ordered by/within _____ days w/input from DJJ / Staffing

Referred to: PTI / SAAP / PADD Case placed on the absentee docket

DEFT ENTERED A PLEA OF: NOT GUILTY GUILTY NO CONTEST BEST INTEREST TO THE COURT

As Charged-Cts: ONLY Lesser Cts: _____ Lesser Charge: _____

Sw & Test Adv of Rts Waived PSI Lesser Cts: _____ Lesser Charge: _____

ADJ GUILTY as Charged as to Cts: ONLY Lesser Cts: _____

FOUND GUILTY as Charged as to Cts: _____ Lesser Cts: _____

ADJ W/HELD as to Cts: _____ SENT W/HELD as to Cts: _____

FOUND AND ADJUDICATED DELINQUENT as to Cts: _____ Dispo Order to follow/Filed

FOUND & ADJ NOT GUILTY as to Cts: _____ Dismiss Nolle Prose Cts: _____

Prob / Comm Control: Revoked Reinstated Modified Term. Successfully / Unsuccessfully

Stip/Found: (violent) Habitual Off. 775.084 Stip/Found: Sexual Offender Sexual Predator Stip/Found: P.R.R.

SENTENCE: PBCJ: 12 MOS Cts: _____ / DOC: _____ Cts: _____

PBCJ: _____ Cts: _____ / DOC: _____ Cts: _____

W/Credit for _____ Days / Mes. / Yrs. Deft Remanded Deft to remain on same rel. status pending sent.

Conc / Consec / Co-Term w/cases / cts: _____

Execution of Sentence Stayed Sentence Suspended Time served as to Cts: _____

Youthful Off Habitual Off Min / Mand: _____ as to Cts: _____

ABOVE SENTENCE TO BE FOLLOWED BY: Probation Drug / Sex Off Prob Comm. Control I II - See Pg. 2

DRIVERS LICENSE TO BE SUSPENDED / REVOKED FOR _____ YEARS AS A RESULT OF THIS PLEA.

DNA SWAB

Set / Remains Set / Reset _____ Div _____ Rm _____ at _____ AM/PM

Deft sign _____

Def Co _____ ASA _____ Bondsman _____

Prob Jail DJJ GAL Notified by mail by: _____ on _____ / _____ / _____

County Courthouse Courtroom, Criminal Justice Bldg. Courtroom, Criminal Justice Complex

205 N. Dixie, West Palm Beach 38844 State Road 80, Belle Glade 3228 Gun Club Rd., West Palm Beach

IF YOU ARE A PERSON WITH A DISABILITY WHO NEEDS ANY ACCOMMODATION IN ORDER TO PARTICIPATE IN THIS PROCEEDING, YOU ARE ENTITLED, AT NO COST TO YOU, TO THE PROVISION OF CERTAIN ASSISTANCE. PLEASE CONTACT MARY JAFFE, ADA COORDINATOR IN THE ADMINISTRATIVE OFFICE OF THE COURT, PALM BEACH COUNTY COURTHOUSE, 205 N. DIXIE HWY, RM 5.2500, WEST PALM BEACH, FL 33401; TELEPHONE (561) 355-4380, WITHIN 2 WORKING DAYS OF YOUR RECEIPT OF THIS NOTICE. IF YOU ARE HEARING OR VOICE IMPAIRED, CALL 1-800-955-8771.

D

Case No.: 2008CF009361AXX W ST of FL vs. JEFFREY EPSTEIN
Charges: PROCURE PERSON UNDER AGE OF 18 FOR PROSTITUTION

(ARISES FROM 2006CF009454AXX)

Arrest# _____ Bond# _____ Type _____ \$ _____ A/C _____

Date 6/30/08 Judge Francis Cr. Rep. P. Williams
 ASA L. Balthasar DC _____ Int _____
 Deft---Pres-/Not Pres. W W/O Def. Cb. LEAD BARGE Esq PD---Pres / Not Pres.

Before the Court for: ST. HUS MARK

Granted Denied With / Without Prejudice Withdrawn Court Reserves Ruling Written Order to Follow

Warrant Ordered Recalled Bond Set at \$ _____ See Below Also Covers Sp Cond
 Bond Forf OR: Disch / Revoked / Reinstated Bond: Disch / Revoked SOR: Disch / Revoked / Reinstated
 Bond Forf Vacated Previous Bond Reinstated, if Bondsman agrees State failed to file charges Released O.R. / S.O.R.

Deft ___ Indigent PD Appt Hrg only PD Pres _____ Court Appts _____
 Evaluation for: Drug Farm DOC Non-Secure Bed by _____
 Pre-Plea PSI ordered by/within _____ days w/input from DJJ / Staffing

Referred to: PTI / SAAP / PADD Case placed on the absentee docket

DEFT ENTERED A PLEA OF: NOT GUILTY GUILTY NO CONTEST BEST INTEREST TO THE COURT

As Charged-Cts _____ Lesser Cts _____ Lesser Charge _____
 Sw & Test Adv of Rts Waived PSI Lesser Cts _____ Lesser Charge _____

ADJ GUILTY as Charged as to Cts 0/0/0 Lesser Cts _____
 FOUND GUILTY as Charged as to Cts _____ Lesser Cts _____
 ADJ W/HELD as to Cts _____ SENT W/HELD as to Cts _____
 FOUND AND ADJUDICATED DELINQUENT as to Cts _____ Dispo Order to follow / Filed
 FOUND & ADJ NOT GUILTY as to Cts _____ Dismiss Nolle Prose Cts _____

Prob / Comm Control: Revoked Reinstated Modified Term: Successfully / Unsuccessfully
 Deft. to pay fine or complete _____ hrs. Community Service or Serve _____ days PBCJ.

Stip/Found: (violent) Habitual Off. 775.084 Stip/Found: Sexual Offender / Sexual Predator Stip/Found: P.R.R.
 SENTENCE: PBCJ 12 Mths Cts: 1 / DOC: _____ Cts: _____
 PBCJ: _____ Cts: _____ / DOC: _____ Cts: _____

W/Credit for _____ Days / Mos. / Yrs. See Dist Remanded Deft to remain on same rel. status pending sent.
 Conc / Consec Co-Term w/cases / cts: 4001.0004.12

Execution of Sentence Stayed Sentence Suspended Time served as to Cts _____
 Youthful Off Habitual Off Min / Mand: _____ as to Cts _____

ABOVE SENTENCE TO BE FOLLOWED BY: Probation Drug Off Prob Comm. Control I II - See Page 2

DNA SWB

Set / Remains Set / Reset _____ Div _____ Rm _____ at _____ AM/PM
Set / Remains Set / Reset _____ Div _____ Rm _____ at _____ AM/PM

Deft sign _____
 Def Co _____ ASA _____ Bondsman _____
 Prob Jail DJJ GAL Notified by mail by: _____ on _____ / _____ / _____
 County Courthouse Courtroom, Criminal Justice Bldg. Courtroom, Criminal Justice Complex
 205 N. Dixie, West Palm Beach 38844 State Road 80, Belle Glade 3228 Gun Club Rd., West Palm Beach

IF YOU ARE A PERSON WITH A DISABILITY WHO NEEDS ANY ACCOMMODATION IN ORDER TO PARTICIPATE IN THIS PROCEEDING, YOU ARE ENTITLED, AT NO COST TO YOU, TO THE PROVISION OF CERTAIN ASSISTANCE. PLEASE CONTACT ROBIN SHEPETH, ADA COORDINATOR IN THE ADMINISTRATIVE OFFICE OF THE COURT, PALM BEACH COUNTY COURTHOUSE, 205 N. DIXIE HWY, RM 5.2500, WEST PALM BEACH, FL 33401; TELEPHONE (561) 355-4380, WITHIN 2 WORKING DAYS OF YOUR RECEIPT OF THIS NOTICE. IF YOU ARE HEARING OR VOICE IMPAIRED, CALL 1-800-955-8771.

DATE: 6/30/08

CASE NO. 2008-CF-9831-XY

NAME: Te Arrye Pstony

TERM OF Prob / Sex Off / Drug Off Prob / C.C. I / C.C. II: 12 mos / yrs-as to Cts. 1

conc w/ consec. w/

Probation transferred to:

SPECIAL CONDITIONS:

- Complete Originally Ordered Conditions
- Curfew: _____ p.m., with the following exception: _____
- Deft. to report to Prob. Dept. immediately upon release
- Deft. not to have in care, custody, or control any unlawful or illegal material, subst., device, or object.
- Deft. to immediately notify Prob. Officer if place of residence or job changes.
- Restitution CRO filed
- Subject to all ordinary and special conditions of Probation

Substance Abuse Eval. / Psychological Eval. / Psychosexual Eval. within / by: _____ and deft. to successfully complete recommended treatment

Random Drug/Alcohol Testing At Deft's Expense Costs Waived

No Consumption/Possession of Alcohol or Drugs or Intoxicants without a Prescription.

Attend _____ AA and/or NA Meetings per Week.

Deft. not to frequent any place of business whose primary purpose is the sale of alcohol.

Complete _____ Hrs. of Community Service to be done at the rate of _____ Hrs. per Wk / Mo. (Min.)

License Revoked / Suspended for _____ mos / yrs

Attend and successfully complete DUI school and 1 session of Victim Impact Panel

No Contact / No Violent Contact / No Direct or Indirect contact w/Victim(s) or others listed:

No Contact w/Minor Children w/o Adult Supervision aware of this case and the disposition.

Cost of Supervision: \$ _____ per month Waived by Court. _____

Enter and Successfully Complete DOC Non-Secure Bed Program and Any Recommended Aftercare.

Hold in Custody, release only to DOC Non-Secure Bed Program Officer.

Enter and Successfully Complete PBSO Long / Short Track Drug Farm and Any Rec. Aftercare.

Forfeit Weapon / Money seized at the time of arrest to:

Enter and Complete: Anger Management Program Batterers Intervention Program

Theft Abatement Program: _____ Other: _____

Defendant may apply for Early Termination after _____, provided all conds. are satisfied.

Serve _____ days / months in PBCJ, with credit for _____ days / months.

See All Attached Documents

Deft must register as a SERIAL OFFENDER

WITHIN 48 HOURS OF RELEASE.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

NO. 08-80119-CIV-MARRA/JOHNSON

JANE DOE NO. 2,

Plaintiff,

█.

JEFFREY EPSTEIN,

Defendant.

_____ /

ORDER DENYING MOTION TO SEAL

THIS CAUSE comes before the Court on Defendant Jeffrey Epstein's Motion to File Ex Parte and Under Seal, filed July 10, 2008. Defendant seeks to file a Notice of Continued Pendency of Federal Criminal Action under seal.¹ The Court has carefully considered the motion and the record and is otherwise fully advised in the premises.

As stated in the Local Rules for the Southern District of Florida, "proceedings in the United States District Court are public and Court filings are matters of public record." S.D. Fla. L.R. 5.4(A). It is well settled that the media and the public in general possess a common-law right to inspect and copy judicial records. *See Nixon* █. *Warner Communications, Inc.*, 435 U.S. 589, 597 (1978). "The right to inspect and copy records is not absolute, however. As with other forms of access, it may interfere with the administration of justice and hence may have to be curtailed." █ █. *Graddick*, 696 F.2d 796, 803 (11th Cir.1983). This right of access creates

¹All documents filed conventionally shall henceforth be filed directly with the Office of the Clerk in West Palm Beach, Florida. The parties shall *not* file documents conventionally in any other division of the Southern District of Florida.

a presumption in favor of openness of court records, which “must be balanced against any competing interest advanced.” *United States v. Noriega*, 752 F. Supp. 1037, 1040 (S.D. Fla.1990). For example, courts may look to see whether the records sought are for illegitimate purposes. [REDACTED], 696 F.2d at 803. Likewise, the Court may consider whether “the press has already been permitted substantial access to the contents of the records.” *Id.*

In his motion to seal, Defendant has made no argument as to why his Notice of Continued Pendency of Federal Criminal Action should not be made available to the public. Defendant states only that he wishes “[t]o avoid disclosure of confidential material.” (Def. Mot. 2.) The Court finds this justification insufficient to justify keeping this document (filed *ex parte*) under seal. The Court is supported in this conclusion by its decision in a similar case, *In re: Jane Doe*, No. 08-80736-CIV (S.D. Fla. July 11, 2008), in which the Court unsealed, over the objection of the United States Attorney, documents containing similar information regarding Defendant’s criminal plea agreement. Thus, any argument regarding confidentiality is vitiated by the fact that information regarding Defendant’s criminal plea arrangement is already a matter of public record. *See, e.g.*, Sally Apgar, *Victims Object to Palm Beach Billionaire’s Plea Deal in Underage Sex Case*, S. Fla. Sun-Sentinel, July 12, 2008. Similarly, Defendant has not justified the necessity of filing his Notice *ex parte*. As such, Defendant’s Motion to Seal shall be denied.

Accordingly, it is **ORDERED AND ADJUDGED** that Defendant’s Motion to File Ex Parte and Under Seal is **DENIED**. The Clerk shall **UNSEAL** docket entries 19 and 20 and make them available for public inspection through CM/ECF at the earliest possible time. Defendant is further **ORDERED** to serve a copy of his Notice on Plaintiff within five (5) days of the date of

entry of this Order.

DONE AND ORDERED in Chambers at West Palm Beach, Palm Beach County,
Florida, this 16th day of July, 2008.



KENNETH A. MARRA
United States District Judge

Copies furnished to:
all counsel of record

**U.S. District Court
Southern District of Florida (West Palm Beach)
CIVIL DOCKET FOR CASE #: 9:08-cv-80119-KAM
Internal Use Only**

Doe, Epstein
Assigned to: Judge Kenneth A. Marra
Referred to: Magistrate Judge Linnea R. Johnson
Case: 9:08-cv-80232-KAM
Cause: 28:1391 Personal Injury

Date Filed: 02/06/2008
Jury Demand: Plaintiff
Nature of Suit: 360 P.I.: Other
Jurisdiction: Diversity

Plaintiff

Jane Doe
No. 2

represented by **Adam D. Horowitz**
Herman & Mermelstein, P.A.
18205 Biscayne Blvd.
Suite 2218
Miami, FL 33160
305-931-2200
Fax: 305-931-0877
Email: ahorowitz@hermanlaw.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Jeffrey Marc Herman
Herman & Mermelstein
18205 Biscayne Boulevard
Suite 2218
Miami, FL 33160
305-931-2200
Fax: 931-0877
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LEAD ATTORNEY
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LEAD ATTORNEY
ATTORNEY TO BE NOTICED



Defendant

Jeffrey Epstein

represented by **Jack Alan Goldberger**
Atterbury Goldberger & Weiss, P.A.
250 Australian Avenue South
Suite 1400
West Palm Beach, FL 33401-5012
561-659-8300
Fax: 835-8691
Email: jagesq@bellsouth.net
ATTORNEY TO BE NOTICED

Michael Ross Tein
Lewis Tein
3059 Grand Avenue
Suite 340

Coconut Grove, FL 33133
 305-442-1101
 Fax: 442-6744
 Email: tein@lewistein.com
 ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
02/06/2008	<u>1</u>	COMPLAINT against Jeffrey Epstein; Filing fee \$ 350. Receipt#: 542215, filed by Jane Doe No.2.(lk) (Entered: 02/06/2008)
02/06/2008	<u>2</u>	Summons Issued as to Jeffrey Epstein. (lk) (Entered: 02/06/2008)
02/08/2008	<u>3</u>	Order Requiring Counsel to Confer and Joint Scheduling Report.Signed by Judge Kenneth A. Marra on 2/8/08.(ir) (Entered: 02/08/2008)
05/22/2008	<u>4</u>	AFFIDAVIT of Service for Summons and Complaint served on Jeffrey Epstein on May 7, 2008, filed by Jane Doe. (Herman, Jeffrey) (Entered: 05/22/2008)
05/22/2008	<u>5</u>	SUMMONS Returned Executed by Jane Doe. Jeffrey Epstein served on 5/7/2008, Answer due 5/27/2008. (lk) (Entered: 05/27/2008)
05/27/2008	<u>6</u>	NOTICE of Docket Correction and Instruction to Filer: re <u>4</u> Affidavit of Service filed by Jane Doe. Error: Wrong Event Selected; Correction=Redocketed as "Summons returned executed", D.E. <u>5</u> . Instruction to Filer=In the future please select "summons returned executed" as the proper Event. (lk) (Entered: 05/27/2008)
05/29/2008	<u>7</u>	Plaintiff's MOTION for Entry of Default by Clerk <i>Against Defendant</i> by Jane Doe. (Attachments: # <u>1</u> Exhibit A and B, # <u>2</u> Text of Proposed Order Default Ord)(Horowitz, Adam) (Entered: 05/29/2008)
06/06/2008	<u>8</u>	CLERK'S NOTICE Denying for Improper Service <u>7</u> Plaintiff's MOTION for Entry of Default by Clerk <i>Against Defendant</i> (tp) (Entered: 06/06/2008)
06/11/2008	<u>9</u>	Plaintiff's MOTION to Compel <i>Clerk to Enter Default Against Defendant, or Alternatively, for an Enlargement of Time to Serve Process, and Incorporated Memorandum of Law</i> by Jane Doe. Responses due by 6/30/2008 (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B)(Horowitz, Adam) (Entered: 06/11/2008)
06/13/2008	<u>10</u>	NOTICE of Attorney Appearance by Jack Alan Goldberger on behalf of Jeffrey Epstein (Goldberger, Jack) (Entered: 06/13/2008)
06/13/2008	<u>11</u>	RESPONSE to Motion re <u>9</u> Plaintiff's MOTION to Compel <i>Clerk to Enter Default Against Defendant, or Alternatively, for an Enlargement of Time to Serve Process, and Incorporated Memorandum of Law</i> filed by Jeffrey Epstein. Replies due by 6/23/2008. (Attachments: # <u>1</u> Affidavit for Richard Barnett)(Goldberger, Jack) (Entered: 06/13/2008)
06/20/2008	<u>12</u>	Defendant's MOTION to Stay by Jeffrey Epstein. Responses due by 7/10/2008 (Goldberger, Jack) (Entered: 06/20/2008)
06/20/2008	<u>13</u>	Defendant's MOTION for Extension of Time to File Answer <i>or Otherwise Respond To Complaint</i> by Jeffrey Epstein. (Goldberger, Jack) (Entered: 06/20/2008)
06/24/2008	<u>14</u>	MEMORANDUM in Support re <u>9</u> Plaintiff's MOTION to Compel <i>Clerk to Enter Default Against Defendant, or Alternatively, for an Enlargement of Time to Serve Process, and Incorporated Memorandum of Law</i> filed by Jane Doe. (Herman, Jeffrey) (Entered: 06/24/2008)
06/30/2008	<u>15</u>	NOTICE by Jeffrey Epstein <i>Of Filing Deposition</i> (Attachments: # <u>1</u> Exhibit)(Goldberger, Jack) (Entered: 06/30/2008)
07/01/2008	<u>16</u>	NOTICE by Jeffrey Epstein <i>Concerning Motion To Stay [DE 12]</i> (Attachments: # <u>1</u> Exhibit A)(Goldberger, Jack) (Entered: 07/01/2008)

07/08/2008	<u>17</u>	NOTICE of Attorney Appearance by Michael Ross Tein on behalf of Jeffrey Epstein (Tein, Michael) (Entered: 07/08/2008)
07/10/2008	<u>18</u>	Plaintiff's MOTION for Extension of Time to File Response as to <u>12</u> Defendant's MOTION to Stay by Jane Doe. (Attachments: # <u>1</u> Text of Proposed Order)(Horowitz, Adam) (Entered: 07/10/2008)
07/10/2008	19	Sealed Document. (yc) (Entered: 07/10/2008)
07/10/2008	20	Sealed Document. (yc) (Entered: 07/10/2008)
07/16/2008	<u>21</u>	ORDER denying motion to file Ex Parte and Under Seal. The clerk shall unseal DE 19 and 20 and make them available for inspection through CM/ECF at the earliest possible time. Signed by Judge Kenneth A. Marra on 7/16/08. (ir) (Entered: 07/16/2008)
07/16/2008	<u>22</u>	ORDER TO SHOW CAUSE why default should not be entered against Defendant. Show Cause Response due by 7/28/2008. Signed by Judge Kenneth A. Marra on 7/16/08. (ir) (Entered: 07/16/2008)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 08-CV-80119-MARRA-JOHNSON

JANE DOE NO. 2,

Plaintiff,

vs.

JEFFREY EPSTEIN,

Defendant.

_____ /

FILED BY 
08 JUL 10 PM 12:19
STEVEN H. LARHORE
CLERK U.S. DIST. CT.
S.D. OF FLA. - MIA

**FILED *EX PARTE*
UNDER SEAL**

DEFENDANT'S MOTION TO FILE *EX PARTE* AND UNDER SEAL



Pursuant to S.D. Fla. L.R. 5.4, defendant Jeffrey Epstein hereby moves to file his Notice of Continued Pendency of Federal Criminal Action, as well as this motion, *ex parte* and under seal, stating as follows:

1. In support of his motion to stay [DE 12], defendant has herewith filed a Notice of Continued Pendency of Federal Criminal Action.
2. The Notice relates to a confidential agreement between the United States Attorney's Office for the Southern District of Florida and the defendant.
3. The information contained in the Notice is material to this Court's consideration of Epstein's motion to stay.
4. To avoid disclosure of confidential material, Epstein requests leave to file the Notice, and this motion, *ex parte* and under seal.
5. Pending a ruling from this Court, Epstein has not served this motion or the Notice on counsel for plaintiff.

WHEREFORE, defendant Jeffrey Epstein respectfully requests leave to file this motion and his Notice of Continued Pendency of Federal Criminal Action, *ex parte* and under seal.

Respectfully submitted,

LEWIS TEIN, P.L.
3059 Grand Avenue, Suite 340
Coconut Grove, Florida 33133
Tel: 305 442 1101 Fax: 305 442 6744

By: _____



GUY A. LEWIS
Fla. Bar No. 623740
lewis@lewistein.com
MICHAEL R. TEIN
Fla. Bar No. 993522
tein@lewistein.com

ATTERBURY, GOLDBERGER & WEISS, P.A.
250 Australian Avenue South, Suite 1400
West Palm Beach, Florida 33401
Tel. 561 659 8300 Fax. 561 835 8691

By: JACK A. GOLDBERGER
Fla. Bar No. 262013
jgoldberger@agwpa.com

Attorneys for Defendant Jeffrey Epstein

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that this motion, in accordance with S.D. Fla. L.R. 5.4, has not been served on opposing counsel and was filed under seal on July 10, 2008.



Michael R. Tein

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 08-CV-80119-MARRA-JOHNSON

JANE DOE NO. 2,

Plaintiff,

vs.

JEFFREY EPSTEIN,

Defendant.

_____ /

FILED BY _____ D.C.
08 JUL 10 PM 12: 20
STEVEN H. LARIMORE
CLERK U.S. DIST. CT.
S.D. OF FLA. - MIA.

**FILED EX PARTE
UNDER SEAL**

**NOTICE OF CONTINUED PENDENCY
OF FEDERAL CRIMINAL ACTION**

Defendant Jeffrey Epstein hereby notifies the Court of the continued pendency of a federal criminal action against him, stating as follows:

On June 30, 2008, after defendant Jeffrey Epstein filed his motion to stay [DE 12], he was sentenced in the state-court criminal case described in that motion (*State of Florida v. Jeffrey Epstein*, Case No. 2006 CF 09454 AXX, Fifteenth Judicial Circuit, Palm Beach County) (the "Florida Criminal Action"). As explained below, the parallel federal criminal action against him described in that motion (*In re Grand Jury*, No. FGJ 07-103(WPB), United States District Court for the Southern District of Florida) (the "Federal Criminal Action"), remains pending.

On September 24, 2007, the United States Attorney's Office for the Southern District of Florida ("USAO"), represented by Assistant United States [REDACTED], and Mr. Epstein, entered into a deferred-prosecution agreement ("Agreement"), which the parties agreed to keep confidential. Prior to entering into that Agreement, [REDACTED] advised that she had already prepared a federal criminal indictment against Mr. Epstein in the Federal Criminal Action.

Under the Agreement, beginning on the date Mr. Epstein began serving his sentence in the Florida Criminal Action, the USAO agreed to suspend its grand jury investigation in the Federal Criminal Action. The USAO, however, retains the

right to reactivate the grand jury and indict Mr. Epstein should he breach any part of the Agreement during its term, which runs for 33 months, beginning on the date Mr. Epstein began serving his sentence in the Florida Criminal Action. Accordingly, the Federal Criminal Action will remain pending against Mr. Epstein for 33 months from June 30, 2008.

Mr. Epstein will provide the Court with a copy of the confidential Agreement for its *in-camera* inspection at the Court's request.

WHEREFORE, Defendant Jeffrey Epstein hereby notifies the Court of the continued pendency of the Federal Criminal Action.

Respectfully submitted,

LEWIS TEIN, P.L.
3059 Grand Avenue, Suite 340
Coconut Grove, Florida 33133
Tel: 305 442 1101
Fax: 305 442 6744

By: 

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Fax. 561 835 8691

By: Jack A. Goldberger
Fla. Bar No. 262013
jgoldberger@agwpa.com

Attorneys for Defendant Jeffrey Epstein

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that this motion, in accordance with S.D. Fla. L.R.
5.4, has not been served on opposing counsel and was filed under seal on July 10,
2008.



Michael R. Tein

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

NO. 08-80119-CIV-MARRA/JOHNSON

JANE DOE NO. 2,

Plaintiff,

■.

JEFFREY EPSTEIN,

Defendant.

_____ /

ORDER DENYING MOTION TO STAY

THIS CAUSE comes before the Court on Defendant Jeffrey Epstein's Motion to Stay (DE 12), filed June 20, 2008. The motion is now fully briefed and is ripe for review. The Court has carefully considered the motion and is otherwise fully advised in the premises.

Defendant Jeffrey Epstein ("Defendant") seeks a stay of this civil action under a federal statute which reads, in pertinent part, as follows:

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

18 U.S.C. § 3509 (k). In his motion, Defendant cites a state case, *Florida ■. Epstein*, No. 2006

CF 09454AXX (Fla. Cir. Ct. 2008)¹ and a federal case, *In re Grand Jury*, No. FGJ 07-103(WPB) (S.D. Fla.), that arise out of the same occurrences and are pending and thus require a stay of this civil case. The federal “case,” according to Defendant, involves a “deferred-prosecution” agreement whereby the U.S. Attorney agreed to suspend its investigation of Defendant while “retaining the right to reactivate the grand jury.” (DE 24.) Defendant essentially reasons, because the U.S. Attorney *could* bring criminal charges against Defendant, that a criminal action is “pending.” The Court rejects this definition of a “pending criminal action.”

When interpreting the text of a statute, the Court begins with the plain meaning of the text. *In re Hedrick*, 524 F.3d 1175, 1186 (11th Cir. 2008). If the plain meaning of a statute is clear, the Court should not deviate from that interpretation. *Id.* Pending is defined as “remaining undecided” and “awaiting decision.” Blacks Law Dictionary (8th ed. 2004).² Likewise, an

¹As Defendant recognizes, the state court case was “finally adjudicated” and thus no longer pending as of June 30, 2008. (*See* DE 12.)

²Defendant attempts to argue that the fact that grand jury subpoenas are still “outstanding” and “not withdrawn” and that the grand jury will not be dismissed until Defendant completes his obligations under the state plea agreement means that a “criminal action” is “pending.” (Def. Reply 4.) Defendant misunderstands the purpose of a grand jury. A grand jury, as Blackstone writes, is composed of citizens who “inquire, upon their oaths, whether there be sufficient cause to call upon the party to answer” the charge of criminal activity. *Beavers v. Henkel*, 194 U.S. 73, 84 (1904) (quoting William Blackstone, 4 Commentaries *303). The grand jury’s sole purpose is to inquire into whether there is probable cause to bring an individual before a tribunal to determine his guilt or innocence of an alleged crime. *Id.* The grand jury is simply an investigative body. *See U.S. v. Alred*, 144 F.3d 1405, 1413 (11th Cir. 1998). A “criminal action” is not instigated by the calling of a grand jury, because a grand jury is convened “to determine whether a crime has been committed and whether criminal proceedings should be instituted against *any* person.” *U.S. v. Calandra*, 414 U.S. 338, 344 (1974). An “action” is commenced against a person after the grand jury actually finds probable cause to make an individual answer specific charges and renders a bill of indictment against that individual. Until a grand jury’s investigation is complete and there has been a determination by a lawful authority that probable cause exists, there can be no criminal action.

“action” is defined as a “criminal judicial proceeding.” *Id.* Because the U.S. Attorney has not filed an indictment or an information against Defendant, the Court fails to see how there is an undecided judicial proceeding in federal court against Defendant.

Defendant argues that this statute should be read to include the definition of “criminal action” used in 18 U.S.C. § 1595(b)(2), which reads as follows: “In this subsection, a ‘criminal action’ includes investigation and prosecution and is pending until final adjudication in the trial court.” Defendant argues that “Congress specifically intended that the term ‘criminal action’ would be applied extremely broadly” under § 1595, so Congress “took pains to ensure that courts would give it the broadest possible construction” and defined “criminal action” as including investigatory stages. (Def. Reply 4.) Defendants argue that the Court should borrow this definition.

The Court disagrees. The Court believes that Congress’s inclusion of this broader definition under § 1595 evinces Congressional intent to depart from the normal meaning of the term “criminal action.”³ This addition to the text suggests that Congress knows the plain meaning of the term “criminal action” and that Congress decided, under § 1595, that the definition of “criminal action” should be broader. In contrast, Congress *could* have made such an addition to § 3509 had it intended the mandatory stay provision to apply to pre-indictment investigations, but it did not. In other words, by not broadening the definition of “criminal action” § 3509, Congress intended that the term should only have its ordinary meaning: that an indictment or information has been filed naming a specific defendant. Instead, it seems clear that

³In fact, Congress made this intent clear by stating that this broader definition of a “criminal action” applied only “in this subsection.”

Congress intended that these two statutory provisions should each have a different scope.

Defendant's argument of statutory construction fails.

The single case cited by Defendant in support of his motion is not on point. In *Doe I* ■ *Francis*, No. 5:03CV260/MCR/WCS, 2005 WL 517847 (N.D. Fla. Feb. 10, 2005), the stay was entered because criminal charges had been filed against the defendant in a state court several months earlier (i.e., the defendants had been indicted by the state attorney). See Memorandum in Support of Motion to Stay Proceedings Pending Outcome of Parallel Criminal Proceedings at 3, *Doe I* ■ *Francis*, No. 5:03CV260/MCR/WCS (N.D. Fla. Dec. 2, 2003). The Court agrees with Defendant that a stay under § 3509(k) is mandatory when a criminal action is pending; the Court simply disagrees that the "deferred-prosecution agreement" constitutes a pending criminal action.

The Court also does not believe a discretionary stay is warranted. Defendant did not seek this relief in his motion; including such a request in the reply brief is inappropriate. Further, the Court sees no reason to delay this litigation for the next thirty-three months. After all, Defendant is in control of his own destiny – it is up to him (and him alone) whether the plea agreement reached with the State of Florida is breached. If Defendant does not breach the agreement, then he should have no concerns regarding his Fifth Amendment right against self-incrimination. The fact that the U.S. Attorney (or other law enforcement officials) may object to some discovery in these civil cases is not, in and of itself, a reason to stay the civil action. Any such issues shall be resolved as they arise in the course of this litigation.

Accordingly, it is **ORDERED AND ADJUDGED** as follows:

1. Defendant's Motion to Stay (DE 12) is **DENIED**.
2. Defendant's Motion for Hearing (DE 27) is **DENIED AS MOOT**.

3. Plaintiff's Motion for an Extension of Time to File Response (DE 18) is **GRANTED NUNC PRO TUNC**.

DONE AND ORDERED in Chambers at West Palm Beach, Palm Beach County, Florida, this 4th day of August, 2008.



KENNETH A. MARRA
United States District Judge

Copies furnished to:
all counsel of record

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

NO. 08-80119-CIV-MARRA/JOHNSON

JANE DOE NO. 2,

Plaintiff,

█

JEFFREY EPSTEIN,

Defendant.

_____ /

ORDER DENYING MOTION TO SEAL

THIS CAUSE comes before the Court on Defendant Jeffrey Epstein's Motion to File Under Seal, filed July 28, 2008. Defendant seeks to file his reply to his Motion to Stay under seal.¹ The Court has carefully considered the motion and the record and is otherwise fully advised in the premises.

As the Court has previously explained to the parties, the Local Rules for the Southern District of Florida state that "proceedings in the United States District Court are public and Court filings are matters of public record." S.D. Fla. L.R. 5.4(A). It is well settled that the media and the public in general possess a common-law right to inspect and copy judicial records. *See Nixon* █ *Warner Communications, Inc.*, 435 U.S. 589, 597 (1978). "The right to inspect and copy records is not absolute, however. As with other forms of access, it may interfere with the administration of justice and hence may have to be curtailed." █ █ *Graddick*, 696 F.2d

¹The parties are reminded that all documents filed conventionally (including those filed under seal) must be filed with the Clerk's Office in West Palm Beach, Florida.

796, 803 (11th Cir.1983). This right of access creates a presumption in favor of openness of court records, which “must be balanced against any competing interest advanced.” *United States v. Noriega*, 752 F. Supp. 1037, 1040 (S.D. Fla.1990). For example, courts may look to see whether the records sought are for illegitimate purposes. *[REDACTED]*, 696 F.2d at 803. Likewise, the Court may consider whether “the press has already been permitted substantial access to the contents of the records.” *Id.*

In his motion to seal, Defendant states that he seeks to file this document under seal “to comply with the confidentiality clause” in the agreement between Defendant and the U.S. Attorney cited in his brief. (Def. Mot. 2.) The Court is familiar with the U.S. Attorney’s objections to unsealing any part of the agreement, *see In re: Jane Doe*, No. 08-80736-CIV (S.D. Fla. July 11, 2008). However, as the Court has previously held, the U.S. Attorney’s objections do not outweigh the public interest in having access to court records. Further, the details of the agreement contained in Defendant’s Reply brief have, in large part, already been unsealed and released to the public. The Court finds no justification to keep these documents under seal.

Accordingly, it is **ORDERED AND ADJUDGED** that Defendant’s Motion to File Under Seal is **DENIED**. The Clerk shall **UNSEAL** docket entries 29 and 30 and make them available for public inspection through CM/ECF at the earliest possible time.

DONE AND ORDERED in Chambers at West Palm Beach, Palm Beach County, Florida, this 4th day of August, 2008.



KENNETH A. MARRA
United States District Judge

Copies furnished to: all counsel of record

Sealed

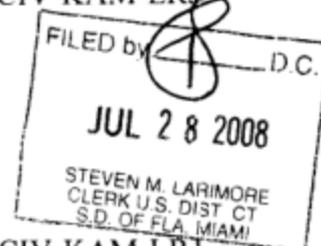
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

JANE DOE NO. 2,

vs.

JEFFREY EPSTEIN.
_____ /

CASE NO.: 08-80119-CIV-KAM-LRJ



JANE DOE NO. 3,

vs.

JEFFREY EPSTEIN.
_____ /

CASE NO.: 08-80232-CIV-KAM-LRJ

JANE DOE NO. 4,

vs.

JEFFREY EPSTEIN.
_____ /

CASE NO.: 08-80380-CIV-KAM-LRJ

JANE DOE NO. 5,

vs.

JEFFREY EPSTEIN.
_____ /

CASE NO.: 08-80381-CIV-KAM-LRJ

FILED UNDER SEAL*

EPSTEIN'S REPLY IN SUPPORT OF MOTION TO STAY

* This motion is filed under seal because the deferred-prosecution agreement between the United States Attorney's Office and Mr. Epstein, discussed herein, contains a confidentiality clause. A motion to seal has been filed contemporaneously.

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The Pending Federal Criminal Action

In 2006, a Florida state grand jury indicted Jeffrey Epstein on allegations similar to those in the instant actions (*State of Florida v. Jeffrey Epstein*, Case No. 2006 CF 09454, Fifteenth Judicial Circuit, Palm Beach County) (the “Florida Criminal Action”).¹ Shortly thereafter, the United States Attorney’s Office for the Southern District of Florida (the “USAO”) began a federal grand-jury investigation into allegations arising out of the same incidents alleged in the instant actions (Grand Jury No. 07-103 (WPB),² United States District Court for the Southern District of Florida) (the “Federal Criminal Action”).

In September 2007, the USAO and Mr. Epstein entered into a highly unusual and unprecedented deferred-prosecution agreement (the “Agreement”), in which the USAO agreed to *defer* (not dismiss or close) the Federal Criminal Action *on the condition* that Mr. Epstein continue to comply with numerous obligations, the first of which was pleading guilty to certain state charges in the Florida Criminal Action. The Agreement itself uses the term “*deferred*” (rather than “dismissed” or “closed”) to describe the status of the Federal Criminal Action:

THEREFORE, on the authority of R. Alexander Acosta, United States Attorney for the Southern District of Florida, prosecution in this District for these offenses shall be deferred in favor of prosecution by the State of Florida, provided that Epstein abides by the following conditions and the requirements of this Agreement

Agreement, at 2.

By no stretch did the USAO finalize, close, complete, dismiss or abandon the Federal Criminal Action. Indeed, as the lead federal prosecutor recently explained, the USAO merely

¹ Since the filing of the motion to stay, Mr. Epstein has pled guilty and been sentenced in the Florida Criminal Action. See Notice Concerning Motion to Stay (7/1/08). Accordingly, the Florida Criminal Action is no longer a basis for this stay. Epstein relies exclusively on the pending Federal Criminal Action for this motion and therefore here provides additional background information relating to that action.

² At the USAO’s request, we wish to clarify a minor issue regarding the form of a citation in Epstein’s initial memorandum supporting his motion to stay. That memorandum cites to the Federal Criminal Action as “*In re* Grand Jury No. 07-103 (WPB),” rather than citing it simply as “Grand Jury No. 107-103 (WPB).” See Motion to Stay, at 2 (6/20/08). Technically, a citation to “*In re* Grand Jury No. 07-103 (WPB)” could be interpreted as referring to litigation arising from Epstein’s motion to quash a subpoena previously issued by “Grand Jury No. 07-103 (WPB),” which subpoena, according to the terms of the deferred-prosecution agreement between Epstein and the USAO described *infra* at 1-3, the USAO is presently holding in abeyance. Accordingly, we hereby clarify that our citation on Page 2 of our motion to stay denoted the grand-jury investigation itself, not litigation arising from that grand-jury investigation.

“agreed to *defer* federal prosecution in favor of prosecution by the State of Florida” *See In re: Jane Doe*, Case No. 08-80736-CIV-Marra/Johnson (S.D. Fla.) (DE 14), [REDACTED] 5, attached hereto as Exhibit “A” (emphasis added). Under the Agreement, the USAO presently retains the continuing right to indict Mr. Epstein - - or to unseal “any” already-existing federal “charges” that may already have been handed up by the federal grand jury and sealed - - should he breach any of its provisions. Agreement, at 2.

The period of the deferral continues until three months after Mr. Epstein completes service of his sentence in the Florida Criminal Action. *Id.* Indeed, the final three months of the Agreement’s term constitute an extended period during which the USAO expressly retains the ability to evaluate whether Epstein committed any breaches of his numerous obligations under the Agreement while he was serving his state sentence, and, if it so determines, reserves the right to indict (or unseal an existing indictment against) Mr. Epstein - - even after he has completed serving his entire state sentence.

The Agreement further provides that upon Epstein’s execution of a plea agreement in the State Criminal Case, the Federal Criminal Action “will be suspended” and all pending grand-jury subpoenas “*will be held in abeyance* unless and until the defendant violates any term of this agreement.” Agreement, at 5 (emphasis added). The Agreement directs the USAO and Epstein to “*maintain their evidence*, specifically evidence requested by or directly related to the grand jury subpoenas that have been issued,” and to maintain such evidence “inviolate.” *Id.* (emphasis added). It also expressly provides that the grand-jury subpoenas continue to remain “*outstanding*” until “*the successful completion* of the terms of this agreement.” *Id.* (emphasis added).

Finally, the Agreement provides that the USAO’s declination of prosecution for certain enumerated offenses and dismissal of any existing (sealed) charges *will not occur until 90 days following the completion of his state sentence*:

If the United States Attorney should determine, based on reliable evidence, that, during the period of the Agreement, Epstein willfully violated any of the conditions of this Agreement, then the United States Attorney may, within ninety (90) days following the expiration of the term of home confinement discussed below, provide Epstein with timely notice specifying the condition(s) of the Agreement that he has

violated, and shall initiate its prosecution on any offense within sixty (60) days' of [sic] giving notice of the violation. Any notice provided to Epstein pursuant to this paragraph shall be provided within 60 days of the United States learning of facts which may provide a basis for a determination of a breach of the Agreement.

After timely fulfilling all the terms and conditions of the Agreement, no prosecution for the offenses set out on pages 1 and 2 of this Agreement, nor any other offenses that have been the subject of the joint investigation by the Federal Bureau of Investigation and the United States Attorney's Office, nor any offenses that arose from the Federal Grand Jury investigation will be instituted in this District, and the charges against Epstein, if any, will be dismissed.

Agreement, at 2.

Consistent with the Agreement and its position that the Federal Criminal Action continues to remain pending, the USAO recently sent letters to attorneys for people that the USAO has designated as "victims." In those letters, the USAO asked, "[I]f you do file a claim under 18 U.S.C. § 2255 and Mr. Epstein denies that your client is a victim of an enumerated offense, please provide notice of that denial to the undersigned [AUSA]." See Decl. of ██████████, Exhs. 6 & 7, at 2 (July 9, 2008). The clear implication of the USAO's request (by which the USAO appears to involve itself in the instant litigation, despite advising the recipients that it cannot "take part in or otherwise assist in civil litigation," *id.*), is that the USAO believes that such denial might breach the Agreement.

Accordingly, the Federal Criminal Action remains "pending."

Discussion

I. Section 3509(k) Applies to Investigations, Not Just Indictments.

While there is no unsealed indicted criminal case against Mr. Epstein, the government's criminal investigation against him remains open. Section 3509(k) clearly applies to stay civil cases during the pendency, not only of indicted criminal cases, but also of yet-to-be-closed investigations.

The term "criminal action" is not expressly defined in § 3509(k). It is defined, however, by a closely related statute. Title 18, U.S.C. § 1595 provides a civil remedy for "forced labor" and "sex trafficking" violations, but stays such actions "during the pendency of any criminal action arising out of the same occurrence in which the claimant is the victim." (A copy of § 1595 is

attached hereto as Exhibit “B”). In enacting § 1595, Congress specifically intended that the term “criminal action” would be applied extremely broadly. Accordingly, Congress took pains to ensure that courts would give it the broadest possible construction and, for that reason, specified in the definition provision that “criminal action” also “includes investigation.” 18 U.S.C. § 1595(b)(2). The only reported decision addressing this provision interpreted it according to its plain language. *See Ara v. Khan*, No. CV 07-1251, 2007 WL 1726456, *2 (E.D.N.Y. June 14, 2007) (ordering “all proceedings in this case stayed pending the conclusion of the government’s criminal investigation of the defendants and of **any** resulting criminal prosecution”) (emphasis added).

Given that the USAO’s Agreement with Epstein indicates that:

- the grand-jury’s subpoenas remain “outstanding” (Agreement, at 5);
- the subpoenas are “held in abeyance” (*id.*);
- the subpoenas are not “withdrawn” (*id.*);
- the parties must “maintain their evidence” (*id.*) (which would be entirely unnecessary if the investigation against Epstein were closed);
- “any” existing “charges” will **not “be dismissed” until after** Epstein has “timely fulfill[ed] all the terms and conditions of the [A]greement” (*id.* at 2); and
- “prosecution in this District . . . shall be **deferred**” (*id.*) (but not closed or dismissed).

-- then, the only reasonable conclusion is that the Federal Criminal Action remains “pending.”³

The plaintiffs argue that a § 3509(k) stay would be “inconsistent with Mr. Epstein’s Agreement with the U.S. Attorney” which the plaintiffs claim is reproduced in the lead

³ The ordinary meaning of the adjective “pending” is “[r]emaining undecided; awaiting decision” *Black’s Law Dictionary* 1154 (8th ed. 2004). The United States Court of Appeals for the Eleventh Circuit routinely relies on *Black’s Law Dictionary* for the definition of statutory terms, including in criminal cases. *See e.g., United States v. Young*, 528 F.3d 1294, 1297 n.3 (11th Cir. 2008) (definitions of criminal “complaint” and “indictment”); *United States v. Brown*, 526 F.3d 691, 705 (11th Cir. 2008) (definition of “knowingly” in criminal statute). A Westlaw search revealed that in 2008 alone, the Eleventh Circuit has already published eight opinions relying on *Black’s Law Dictionary* for definitions. *See also, White v. Klitzkie*, 281 F.3d 920, 928 (9th Cir. 2002) (relying on *Black’s Law Dictionary*, in the context of a criminal case, for the definition of “pending” as “awaiting decision”); *Swartz v. Meyers*, 204 F.3d 417, 421 (3d Cir. 2000) (relying on *Black’s Law Dictionary* for the definition of “pending,” expressly because “‘pending’ is not defined in the statute”). Any common-sense reading of the Agreement and the USAO’s recent sworn construction of it, is consonant with the Federal Criminal Action’s “remaining undecided” and “awaiting decision.” *See Unified Gov’t of Athens-Clarke County v. Athens Newspapers, LLC*, No. S07G1133, ___ S.E.2d ___, 2008 WL 2579238, *3 (Ga. June 30, 2008) (reviewing a public-records request against Georgia’s “pending investigation” exception to its open-records law, and holding that “a seemingly inactive investigation which has not yet resulted in a prosecution logically “remains undecided,” and is therefore “pending,” until it “is concluded and the file **closed**”) (emphasis added).

prosecutor's July 10 letter to their counsel (attached to Plaintiffs' responses as Exhibit A). Apparently, on July 10, the lead prosecutor sent a letter to the plaintiffs' lawyer stating that "[o]ne . . . condition to which Epstein has agreed" is that each plaintiff "will have the same rights *to proceed under Section 2255* as she would have had, if Mr. Epstein had been tried federally and convicted of an enumerated offense." See Response Memo, at 5 & Ex. A, at 1-2 (emphasis added). This argument warrants absolutely no consideration, however, since the plaintiffs have not pled any claims under 18 U.S.C. § 2255.

II. Section 3509(k) Applies Even After a Plaintiff Turns 18.

Without citing to a single case, the plaintiffs argue that § 3509(k) does not apply to plaintiffs over the age of 18. An examination of the legislative history and related statutes shows that this unsupported argument must be rejected.

The parallel stay provision in § 1595, discussed *supra* at 3-4, mandates, without exception, that any civil action brought under that section for violations of § 1591 (prohibiting transportation of minors for prostitution) "shall be stayed during the pendency of any criminal action arising out of the same occurrence in which the claimant is the victim." 18 U.S.C. § 1591(b)(1). Whether the § 1595 plaintiff has turned 18 does not vitiate the efficacy of this mandatory stay.

An example illustrates why the stay provided in § 3509(k) has the same broad scope as the stay provided in § 1591(b)(1). As discussed above, § 3509(k) stays any civil suit for injury to a minor, arising out of the same occurrence as a pending criminal action. One type of civil suit falling within § 3509(k)'s ambit is a suit seeking redress for a violation of 18 U.S.C. § 2423(a). Section 2423(a) - - just like § 1591 - - prohibits transportation of minors for prostitution. The elements of both statutes are identical. There would simply be no legitimate basis for Congress to differentiate between the consequences attached to violating these two sections. Thus, just as Congress mandated under § 1595(b)(1) that civil discovery shall be stayed when there is an ongoing federal investigation under § 1591 (even after the victim turns 18), the identical treatment should apply under § 3509(k) to civil actions brought for the identical violation of § 2423(a).

Logic compels a rule requiring continued application of the § 3509(k) stay to a putative victim who has since turned 18. Consider again the example of § 2243(a). Assume that the USAO is investigating a § 2243(a) violator with two alleged victims; one who is now 17, and one who has turned 19. Assume further that both decide to sue the alleged offender while the USAO is still in the process of conducting its criminal investigation. Why would Congress prohibit the defendant from conducting civil discovery in the 17-year-old's lawsuit, but permit him to conduct full discovery in the 19-year-old's lawsuit, including taking the depositions of both the 19- and the 17-year-old, the federal investigating agents and all the grand-jury witnesses? This could not have been Congress' intent.

The legislative history to a statute resembling § 1595 is also instructive. When Congress enacted 18 U.S.C. § 2255, it provided a civil remedy to any "minor . . . victim" of enumerated federal sex offenses. *See* Child Abuse Victims' Rights Act of 1986, Pub. L. No. 99-500, 100 Stat. 1783, § 703 (1986). In 2006, Congress amended the statute to clarify that the civil cause of action was available not just while the victim was a minor, but even after she or he turned 18. *See* Pub. L. 109-248, 120 Stat. 650, § 707 (b)(1)(A) (amending § 2255 to permit suit by adults who were victims of enumerated federal offenses when they were minors, by deleting "Any minor who is [a victim]" and adding "Any person, who, while a minor, was [a victim]"). Meanwhile, the stay provisions of § 3509(k) remained unchanged. There is no reason to think that Congress would afford prosecutors protection for their investigations while the victims were minors, but completely eliminate those protections the moment one of the victims turned 18.

The District Court for the Northern District of Florida confirmed this position and specifically rejected the plaintiffs' contrary argument. *See Doe v. Francis*, No. 5:03 CV 260, 2005 WL 950623, at *2 (N.D. Fla. 2005). The plaintiffs there argued that "the stay should be lifted due to the fact that the minor Plaintiffs have now reached the age of majority during the pendency of the state criminal case." *Id.* The court found this argument "unavailing . . . given the victims' minor status at the time of the events giving rise to the underlying claims." *Id.* (Interestingly, the arguments made by Jane Doe Nos. 2-5 in their oppositions to Epstein's motion to stay presently

pending before this Court, are literally lifted⁴ from the plaintiffs' brief submitted to, and rejected by, the Northern District of New York in *Francis*.) The court specifically held that "because the victims were *minors at the time of the Defendants' actions* alleged in both [the civil and criminal] cases, § 3509(k) applies." *Id.* (emphasis added).

The United States Department of Justice has itself emphatically embraced the interpretation of § 3509(k) as applying to stay *all* civil actions relating to sex offenses against minors, pending *the completion* of a parallel criminal action, *without regard to whether the plaintiff has turned 18 during her civil lawsuit*:

The subsection should stay all pending civil actions in the wake of a criminal prosecution. Notably, in the context of 18 USC § 2255 ("civil remedy for personal injuries"), all civil actions are stayed pending the completion of a criminal action. See also 18 USC § 3509(k).

H.R. Rep. 108-264(II), 108th Cong., 1st Sess. (2003), reprinted at 2003 WL 22272907, at *16-17 ("agency view" by the Department of Justice on bill later codified at 18 U.S.C. § 1595).

The Department specifically argued to Congress in the clearest terms: "We believe that prosecutions should take priority over civil redress and that *prosecutions should be complete* prior to going forward with civil suits." *Id.* at 17 (emphasis added). Nowhere did the Department remotely suggest - - as the plaintiffs have implied - - that pending prosecutions warrant *less* protection (*i.e.*, should be "hinder[ed]") simply because a particular civil plaintiff happens to reach his or her 18th birthday.

III. A Stay is Mandatory Despite Resulting "Delay" to Civil Lawsuits.

Inherent in any § 3509(k) stay is delay to the progress (discovery, trial, appeal) of *all* related civil lawsuits. Congress recognized this in enacting the stay provision, which necessarily prioritized the interests of completing a criminal investigation and prosecution over the interests of a particular plaintiff in seeking personal pecuniary damages. Based on this reasoning, the *Francis*

⁴ Compare *Doe v. Francis*, Case No. 5:03cv260-MCR-WCS (N.D. Fla.), Memorandum in Support of Plaintiffs' Motion to Reconsider Plaintiffs' Motion to Lift Stay and for Status Conference (DE 92, available on PACER), with Plaintiff's Memorandum of Law in Response to Defendant's Motion to Stay, filed in Case Nos. 08-cv-80119-KAM (*Doe No. 2*, DE 25), 08-cv-80232-KAM (*Doe No. 3*, DE 20), 08-cv-80380-KAM (*Doe No. 4*, DE 31), and 08-cv-80381-KAM (*Doe No. 5*, DE 29).

court specifically refused to provide any relief to plaintiffs “simply because the state [criminal] matter is not progressing as fast as they would hope.” 2005 WL 950623, at *2. The court made this determination despite the plaintiffs’ complaints about the “frustrating delay” and that “the state criminal case ‘has languished for almost two years with no end in sight,’” finding that this “is a matter to be addressed in state [criminal] court.” *Id.* Accordingly, the anticipated delay in this case, attendant to the term of the deferred-prosecution agreement, does not change the clear command of § 3509(k).

According to their own pleadings, the plaintiffs waited between three and six years before filing these lawsuits,⁵ and so cannot rightfully claim prejudice from additional temporary delay.

IV. Section 3509 Aside, a Discretionary Stay is Warranted.

Even, *arguendo*, were this Court not to apply the mandate of § 3509, a discretionary stay should still be entered during the pendency of the Federal Criminal Action. *SEC v. Healthsouth Corp.*, 261 F. Supp. 2d 1298, 1326 (N.D. Ala. 2003) (“No question exists that this court has the power to stay a civil proceeding due to an active, parallel criminal investigation.”). Other federal statutes support such a stay -- particularly when the criminal action may be adversely affected by the civil litigation. For example, under 18 U.S.C. § 2712(e)(1), “the court shall stay any action commenced [against the United States] if the court determines that civil discovery will adversely affect the ability of the Government to conduct a related investigation or prosecution of a related criminal case.” Allowing these lawsuits to progress while Epstein remains subject to the Federal Criminal Action will prejudice him irrevocably and irreparably. As provided below, there are several adverse effects to allowing the civil litigation to proceed while the Federal Criminal Action remains pending.

In these lawsuits, Epstein has a right to defend himself. In the Federal Criminal Action, Epstein has a right against self-incrimination.⁶ Without a stay, Epstein will be immediately forced to abandon one of these rights.

⁵ Jane Does No. 2 and No. 3 allege that their claims arose “[i]n or about 2004-2005;” Jane Does No. 4 and No. 5 allege that their claims arose “[i]n or about 2002-2003.” Complaints, ¶ 8.

Should he choose his Fifth Amendment rights, he will expose himself to an adverse inference at the summary-judgment stage and at trial. *See generally, Wehling v. Columbia Broad. Sys.*, 611 F.2d 1026, 1027 (5th Cir. 1980) (observing that “invocation of the privilege would be subject to the drawing of an adverse inference by the trier of fact”).

On the other hand, should Epstein choose his right to defend himself in these lawsuits, the USAO will be able to use his responses at every stage of the discovery and trial process (*e.g.*, his Answer, responses to document requests, responses to requests for admissions, sworn answers to interrogatories, answers to deposition questions, and trial testimony) to his detriment in the Federal Criminal Action.⁷

In these lawsuits, even before civil discovery begins, under the Initial Disclosures required by Fed. R. Civ. P. 26 and S.D. Fla. Local Rule 26.1, Epstein “must” disclose the identities of all the witnesses he would call in his defense to the Federal Criminal Action (Rule 26(a)(1)(A)(i)), copies of “all documents” he “may use to support [his] defenses” (Rule 26(a)(1)(A)(ii)), as well as the identity of “any” expert witness he “may use at trial,” along with mandatory disclosure of “a written report” containing “a complete statement of all opinions the [expert] will express and the basis and reasons for them” (Rule 26(a)(2)(A) and (B)(i)).

In contrast, in the pending Federal Criminal Action, which is governed exclusively by the Federal Rules of Criminal Procedure, the USAO would not be entitled to compel pre-trial production of *any* of this information. *See* Fed. R. Cr. P. 16(b)(1)(A), (C), and 16(b)(2); *United States v. Argomaniz*, 925 F.2d 1349, 1355-56 (11th Cir. 1991) (explaining act-of-production privilege).

Thus, absent a stay of this civil action, the USAO would receive fundamentally unfair access to defense information and highly prejudicial advance insight into criminal defense

⁶ The privilege applies in “instances where the witness has reasonable cause to apprehend danger” of criminal liability. *Hoffman v. United States*, 341 U.S. 479, 486 (1951).

⁷ This could give the USAO a tremendous advantage in prosecuting Epstein in the Federal Criminal Action. *See* Comment, *Using Equitable Powers to Coordinate Parallel Civil and Criminal Actions*, 98 Harv. L. Rev. 1023, 1030 (1985) (observing that “the prosecutor may have access to detailed civil depositions of the accused witnesses, while the rules of criminal procedure bar the accused from deposing the prosecutor’s witnesses”).

strategy. *See* Comment, 98 Harv. L. Rev. at 1030 (“To the extent that a prosecutor acquires evidence that was elicited from the accused in a parallel civil proceeding, the criminal process becomes less adversarial.”).

Without a stay in place, discovery will proceed, including against third parties. Mr. Epstein will have no alternative but to issue subpoenas seeking evidence from state and federal law-enforcement officers. For example, Epstein is clearly entitled to discover evidence of prior statements (including inconsistent statements) given by witnesses whom law-enforcement has previously interviewed. *See, e.g., Cox v. Treadway*, 75 F.3d 230, 239 (6th Cir. 1996) (holding that district court properly admitted testimony of prosecutor about prior inconsistent statements that witness made to the prosecutor). Likewise, Epstein may be entitled to discovery of relevant evidence that is in the present possession of the grand jury or other law-enforcement agencies. *See, e.g., Simpson v. Hines*, 729 F. Supp. 526, 527 (E.D. Tex. 1989) (“The grand jury has concluded its deliberations The need for secrecy of these specific tapes no longer outweighs other concerns.”); *Golden Quality Ice Cream Co., Inc. v. Deerfield Specialty Papers, Inc.*, 87 F.R.D. 53, 59 (E.D. Pa. 1980) (“[W]here, as here, the grand jury has completed its work and all that is sought are those documents turned over to the grand jury by the corporations which are defendants in the civil case, the considerations . . . militating against disclosure are beside the point.”) (*citing Douglas Oil Co. of Calif. v. Petrol Stops Nw.*, 441 U.S. 211 (1979)).

In response to such third-party subpoenas to law-enforcement witnesses, we anticipate that it will be the government, not Mr. Epstein, who will object to discovery in these civil cases, until the final conclusion of the Federal Criminal Action.

Conclusion

Because these lawsuits arise from the same allegations as the Federal Criminal Action, this Court should stay these cases until that criminal action is no longer pending.

Respectfully submitted,

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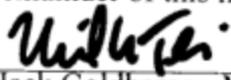
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CERTIFICATE OF COMPLIANCE WITH LOCAL RULE 7.1.A.3

While defense counsel admittedly did not confer with plaintiffs' counsel prior to filing the motion to stay, it was by no means in willful disregard of the Local Rule. Shortly after the filing of the motion and *before* plaintiffs filed their response memoranda suggesting that no conference had taken place, *the parties did confer in a good-faith and specific attempt to resolve the motion* and were unable to do so, because plaintiffs' counsel would not agree to a stay. Accordingly, the brief delay in conducting the Rule 7.1 conference did not prejudice the plaintiffs at all or result in unnecessary judicial intervention. It is perhaps worth noting that, contrary to their Rule 7.1 certificate, plaintiffs did not confer prior to filing their motion to extend time to file their response memoranda (which extension defendant did not oppose anyway, including on the basis of failure to comply with Rule 7.1). Further information on the reasons the Rule 7.1 conference for the instant motion to stay was conducted after filing the motion to stay will be provided to the Court upon its request, preferably *ex parte* in order to avoid disclosure of privileged information. The defendant respectfully requests the opportunity to make such an *ex parte* disclosure in the event that the Court considers denying the motion under Local Rule 7.1.A.3. In any event, we apologize to the Court for non-compliance with the pre-filing requirement of the Rule, would have conferred even sooner had plaintiffs pointed the issue out immediately upon receipt of our motion, did confer with plaintiffs' counsel prior to filing the motion to seal this reply, and commit to precise compliance with the Rule for the remainder of this litigation.



Jack Goldberger, Michael Tein

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was served on July 28, 2008 by U.S. mail on all counsel named on the service list.



Michael R. Tein

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 08-80119-CIV-MARRA/JOHNSON

JANE DOE NO. 2,

Plaintiff,

vs.

JEFFREY EPSTEIN

Defendant.

MOTION TO DISMISS

Defendant Jeffrey Epstein, pursuant to Rule 12(b) of the Federal Rules of Civil Procedure and Rule 7.1(A) of the Local Rules for the Southern District of Florida, moves to dismiss Count I of plaintiff's complaint,¹ and states as follows:

¹ The time to answer the remaining allegations of the complaint is tolled pending the Court's ruling on the present motion. *See Beaulieu v. Bd. of Trustees of Univ. of W. Fla.*, No. 3:07cv30/RV/EMT, 2007 WL 2020161, * 2 (N.D. Fla. July 9, 2007) (holding that defendant's partial motion to dismiss "automatically extends its time to answer . . . until after the court has ruled on [its] motion to dismiss"); *Finnegan v. Univ. of Rochester Med. Ctr.*, 180 F.R.D. 247, 249 (W.D.N.Y. 1998) (concluding "that the filing of a motion that only addresses part of a complaint suspends the time to respond to the entire complaint, not just to the claims that are the subject of the motion"); *Schwartz v. Berry College, Inc.*, No. Civ.A. 4:96CV338-HLM, 1997 WL 579166, *1 (N.D. Ga. July 3, 1997) (noting that there is significant case law to support the position that "when a defendant files a Rule 12(b) motion to dismiss, addressing only some of the claims contained in the plaintiff's complaint, the defendant is not required to file an answer until the court rules on the motion to dismiss").

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ALLEGATIONS IN PLAINTIFF'S COMPLAINT

This action arises out of the alleged assault of the plaintiff. According to the allegations in her complaint, the plaintiff went to Mr. Epstein's house to give him "a massage for monetary compensation" (Compl. ¶ 12), where Mr. Epstein allegedly assaulted her "in violation of Chapter 800 of the Florida Statutes." (Compl. ¶ 18).

The plaintiff tries to assert a claim for sexual assault (Compl. ¶¶ 15-19.) This theory of liability, however, cannot be supported by the allegations in the complaint. In fact, even if everything in the complaint were true, recovery against Jeffrey Epstein, for Count I, under any formulation, is impossible under Florida law. Accordingly, this count must be dismissed.

ARGUMENT

A motion to dismiss under Fed. R. Civ. P. 12(b)(6) should be granted when a court cannot identify "each of the *material* elements necessary to sustain a recovery under some viable legal theory." *Snow v. DirectTV, Inc.*, 450 F.3d 1314, 1320 (11th Cir. 2006) (*quoting Roe v. Aware Woman Ctr. For Choice, Inc.*, 253 F.3d 678, 684 (11th Cir. 2001)). Moreover, a court should dismiss a complaint "when, on the basis of a dispositive issue of law, no construction of the factual allegations will support a cause of action." *Marshall County Bd. of Educ. v. Marshal County Gas Dist.*, 992 F.2d 1171, 1174 (11th Cir. 1993). "[T]o survive a

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motion to dismiss, plaintiffs must do more than merely state legal conclusions; they are required to allege some specific factual bases for those conclusions” *Holt v. Crist*, No. 06-14617, 2007 WL 1156938, *2 (11th Cir. Apr. 19, 2007). As such, “conclusory allegations, unwarranted deductions of facts or legal conclusions masquerading as facts will not prevent dismissal.” *Snow*, 450 F.3d at 1320.

I. Count I Fails to State a Cause of Action For Assault Recognized by Florida Law.

The plaintiff attempts to plead a cause of action against Mr. Epstein for “sexual assault” based on a “violation of Chapter 800 of the Florida Statutes”² for the “lewd and lascivious acts committed by Epstein upon Jane Doe.” (Compl. ¶ 18.) Plaintiff cannot assert a cause of action for “violation of Chapter 800, Florida Statutes” because there is *no private right of action* under that Chapter. *See generally Am. Home Assurance Co. v. Plaza Materials Corp.*, 908 So. 2d 360, 374 (Fla. 2005) (observing that “not every statutory violation carries a civil remedy” (citing *Villazon v. Prudential Health Care Plan, Inc.*, 843 So. 2d 842, 852 (Fla. 2003)). *See also, e.g., Miami Herald Publ’g Co. v. Ferre*, 636 F. Supp. 970 (S.D. Fla. 1985) (King, C.J.) (holding that violation of Florida’s criminal extortion statute does not give rise to a civil cause of action for damages).

² Chapter 800, Florida Statutes, is entitled, “Lewdness; Indecent Exposure.”

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Where a plaintiff brings a civil action pursuant to a criminal statute that provides no civil remedy, her complaint is properly dismissed for failure to state a cause of action. *See Mantooth v. Richards*, 557 So. 2d 646, 646 (Fla. 4th DCA 1990) (per curiam) (affirming dismissal of plaintiff's claim for parental kidnapping where "the mentioned statutes concern only criminal violations *and do not afford a civil remedy*") (citation omitted) (emphasis added).

Even if Chapter 800 provided a civil remedy (which it does not) the statute does not apply to the plaintiff. The statute prohibits sexual activity with or lewd or lascivious offenses against "a person . . . *less* than 16 years of age." § 800.04, Fla. Stat. (2008) (emphasis added). By her own admission, the plaintiff was "approximately *16 years old.*" (Compl. ¶ 8.) (emphasis added). Plainly, the plaintiff falls outside of the scope of the statute's protection. Accordingly, the plaintiff's claim for sexual assault against Mr. Epstein, pursuant to a violation of Chapter 800, Florida Statutes, must be dismissed.

Should the Court look beyond the plain language of the plaintiff's complaint and construe Count I as a claim for common-law assault, that claim would also fail. As the court explained in *Lay v. Kremer*, 411 So. 2d 1347, 1349 (Fla. 1st DCA 1982), an assault is "an intentional, unlawful offer of corporal injury to another by force, or force unlawfully directed toward another under such circumstances as to create a fear of imminent peril, coupled with the apparent

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present ability to effectuate the attempt.” An assault thus requires “an affirmative act—a threat to use force, or the actual exertion of force.” *Sullivan v. Atl. Fed. Sav. & Loan Assoc.*, 454 So. 2d 52, 54 (Fla. 4th DCA 1984) (affirming dismissal of assault claim where there was no affirmative act).

In this case, there is no such affirmative act. The only thing that Mr. Epstein is alleged to have said to the plaintiff is “to take off her clothes” and “to give him a massage.” (Compl. ¶ 12.) These allegations fall far short of an “offer of corporal injury by force.” There are no allegations that Jane Doe was placed in any fear of imminent peril. *See Gatto v. Publix Supermarket, Inc.*, 387 So. 2d 377, 379 (Fla. 3d DCA 1980) (holding that where there was no evidence to show that Gatto was placed in fear of imminent peril, there was no assault). In fact, the plaintiff does not even allege that Mr. Epstein touched her. Thus, there was no assault.

Accordingly, because the plaintiff has failed to plead a cause of action for assault recognized in Florida, Count I against Mr. Epstein must be dismissed.

Conclusion

For the reasons set forth herein, Defendant Jeffrey Epstein respectfully requests that Count I of the plaintiff’s complaint be dismissed.

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Respectfully submitted,

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CASE NO.: 08-80119-CIV-MARRA/JOHNSON

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CERTIFICATE OF COMPLIANCE WITH LOCAL RULE 7.1

Undersigned counsel has conferred in good faith with counsel for the plaintiff, who opposes the relief requested in this motion.

/s/ Michael R. Tein
Michael R. Tein

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on September 4, 2008, I electronically filed the foregoing document with the Clerk of Court using CM/ECF. I also certify that the foregoing document is being served this day on all individuals on the following service list via transmission of Notices of Electronic Filing generated by CM/ECF.

/s/ Michael R. Tein
Michael R. Tein

CASE NO.: 08-80119-CIV-MARRA/JOHNSON

Service List

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 08-CV-80119-MARRA/JOHNSON

JANE DOE NO. 2,

Plaintiff,

vs.

JEFFREY EPSTEIN,

Defendant.

**PLAINTIFF'S MEMORANDUM IN RESPONSE
TO DEFENDANT'S MOTION TO DISMISS**

Plaintiff, Jane Doe No. 2, ("Jane" or "Jane Doe"), by and through her undersigned counsel, files this Memorandum in Response to Defendant's Motion to Dismiss, and states as follows:

1. Defendant, Jeffrey Epstein is alleged to have sexually abused Jane Doe when she was a minor. The Complaint is in two Counts: Count I is labeled "Sexual Assault", and alleges an intentional tort based on the actions of Jeffrey Epstein; Count II alleges the tort of intentional infliction of emotional distress based on the same factual allegations. Defendant Epstein has moved to dismiss only Count I of the Complaint, contending that Plaintiff has failed to state a claim. Simultaneously herewith, Plaintiff intends to file an Amended Complaint which substantially revises Count I and moots the Defendant's Motion to Dismiss.¹

2. In any event, the Complaint sufficiently alleged a claim for sexual assault and battery.

¹The Amended Complaint also adds as Count III a federal claim against Defendant Epstein under 18 U.S.C. §§2422 and 2255. Under Fed.R.Civ.P. 15(a), a party may amend the pleading once as a matter of course before being served with a "responsive pleading". Defendant has not to date filed a "responsive pleading" in this case within the meaning of Fed.R.Civ.P. 7(a). It is established in the courts of the Eleventh Circuit that a motion to dismiss is not a "responsive pleading" and does not affect a plaintiff's right to amend the pleading once as a matter of course. Williams v. Board of Regents, 477 F.3d 1282, 1291 (11th Cir. 2007).

The gravamen of the claims in Count I is set forth in paragraph 16 of the Complaint: “Epstein tortiously assaulted Jane Doe sexually. Epstein’s acts were intentional, unlawful, offensive and harmful.”

3. Count I does not purport to be brought under the criminal statutes.² Whether a Complaint states a claim for relief is not based on labels or conclusions; rather it is determined by the *factual allegations*, which “must be enough to raise a right to relief above the speculative level.” Bell Atlantic Corp. v. Twombly, 127 5. Ct. 1955, 1965 (2007). Here, the factual allegations establish an intentional tort claim for sexual assault and battery.³ See Paul v. Holbrook, 696 So.2d 1311 (Fla. 5th DCA 1997) (“[a] battery consists of the infliction of a harmful or offensive contact upon another with the intent to cause such contact or the apprehension that such contact is imminent”); Scelta v. Delicatessen Support Services, Inc., 57 F.Supp. 2d 1327, 1358-59 (M.D. Fla. 1999) (allegation that defendant attempted to put his hands down plaintiff’s dress, and that there was an actual and intentional touching, sufficient to state a claim for battery); Hogan v. Tavzel, 660 So.2d 350 (Fla. 5th DCA 1995) (tortfeasor may be liable for battery for infecting another with a sexually transmitted disease); see also **Restatement (Second) of Torts Assault**, § 21 (1965) (stating that an assault occurs when a person “acts intending to cause a harmful or offensive contact with the person of the other, or an imminent apprehension of such contact, and the other is thereby put in such imminent apprehension”).

² Chapter 800 of the Florida Statutes is mentioned in the Complaint (¶18) because conduct against a person in violation of the criminal laws of the State generally give rise to a civil claim for intentional tort. Count I does not purport to bring a separate civil claim for violation of a strictly criminal statute.

³ Assault and battery are closely related common law intentional torts that are commonly alleged together. See Herzfeld v. Herzfeld, 781 So.2d 1070 (Fla.2001) (noting that plaintiff alleged intentional tort of “assault and battery” based on allegations of sexual abuse). Sullivan v. Atlantic Federal Savings & Loan, 454 So.2d 52 (Fla. 4th DCA 1984) (holding that a cause of action for assault and battery cannot be based entirely on an omission).

4. Epstein's conduct as alleged in this case of masterbating during the massage, directing the Plaintiff to remove her clothes, and touching the Plaintiff, constitutes the intentional tort of assault and battery. Accordingly, even if the Complaint had not been amended, it sufficiently alleges facts establishing an assault and battery.

Based on the foregoing, Defendant's Motion to Dismiss is moot, and, in any event, not well founded, and therefore should be denied.

Dated: September 22, 2008.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on September 22, 2008, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day to all parties on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those parties who are not authorized to receive electronically Notices of Electronic Filing.

/s/ Jeffrey M. Herman

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 08-CV-80119-MARRA/JOHNSON

JANE DOE NO. 2,

Plaintiff,

vs.

JEFFREY EPSTEIN,

Defendant.

AMENDED COMPLAINT

Plaintiff, Jane Doe No. 2 (“Jane” or “Jane Doe”), brings this Complaint against Jeffrey Epstein, as follows:

Parties, Jurisdiction and Venue

1. Jane Doe No. 2 is a citizen and resident of the Commonwealth of Virginia, 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.
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 U.S.C. §1332(a), as the matter in controversy (i) exceeds \$75,000, exclusive of interest and costs; and (ii) is between citizens of different states.
6. This Court has venue of this action pursuant to 28 U.S.C. §1391(a) as a substantial part of the events or omissions giving rise to the claim occurred in this District.

Factual Allegations

7. At all relevant times, Defendant Jeffrey Epstein (“Epstein”) was an adult male, 52 years old. 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.

8. 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 2004-2005, Jane Doe, then approximately 16 years old, fell into Epstein’s trap and became one of his victims.

9. 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.

10. Epstein’s scheme involved the use of young girls to recruit underage girls. (Upon information and belief, the young girl who brought Jane Doe to Epstein was herself a minor victim of Epstein, and will therefore not be named in this Complaint). Under Epstein’s plan, underage girls were recruited ostensibly to give a wealthy man a massage for monetary compensation in his Palm Beach mansion. The recruiter would be contacted when Epstein was planning to be at his Palm Beach residence or soon after he had arrived there. Epstein or someone on his behalf would direct the recruiter to bring one or more underage girls to the residence. The recruiter, upon information and belief, generally sought out economically disadvantaged underage girls from western 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. This was an important element of Epstein’s plan.

11. Epstein's plan and scheme reflected a particular pattern and method. Upon arrival at Epstein's mansion, the underage victim would be introduced to Sarah Kellen, Epstein's assistant, who gathered the girl's personal information, including her name and telephone number. Ms. Kellen would then bring the girl up a flight of stairs to a bedroom that contained a massage table in addition to other furnishings. There were photographs of nude women lining the stairway hall and in the bedroom. 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, including masturbation and touching the girl's vagina.

12. Consistent with the foregoing plan and scheme, Jane Doe was recruited to give Epstein a massage for monetary compensation. Jane was brought to Epstein's mansion in Palm Beach. Once at the mansion, Jane was introduced to Sarah Kellen, who led her up the flight of stairs to the room with the massage table. In this room, Epstein told Jane to take off her clothes and give him a massage. Jane kept her panties and bra on and complied with Epstein's instructions. Epstein wore only a towel around his waste. After a short period of time, Epstein removed the towel and rolled over exposing his penis. Epstein began to masturbate and he sexually assaulted Jane.

13. After Epstein had completed the assault, Jane was then able to get dressed, leave the room and go back down the stairs. Jane was paid \$200 by Epstein. The young girl who recruited Jane was paid \$100 by Epstein for bringing Jane to him.

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

COUNT I
Sexual Assault and Battery

15. Plaintiff Jane Doe repeats and realleges paragraphs 1 through 14 above.

16. Epstein acted with intent to cause an offensive contact with Jane Doe, or an imminent

apprehension of such a contact, and Jane Doe was thereby put in such imminent apprehension.

17. Epstein made an intentional, unlawful offer of offensive sexual contact toward Jane Doe, creating a reasonable fear of imminent peril.

18. Epstein intentionally inflicted harmful or offensive contact on the person of Jane Doe, with the intent to cause such contact or the apprehension that such contact is imminent.

19. Epstein tortiously committed a sexual assault and battery on Jane Doe. Epstein's acts were intentional, unlawful, offensive and harmful.

20. Epstein's plan and scheme in which he committed such acts upon Jane Doe were done willfully and maliciously.

21. As a direct and proximate result of Epstein's assault on Jane, she has suffered and will continue to suffer severe and permanent traumatic injuries, including mental, psychological and emotional damages.

WHEREFORE, Plaintiff Jane Doe No. 4 demands judgment against Defendant Jeffrey Epstein for compensatory damages, punitive damages, costs, and such other and further relief as this Court deems just and proper.

COUNT II
Intentional Infliction of Emotional Distress

22. Plaintiff Jane Doe repeats and realleges paragraphs 1 through 14 above.

23. Epstein's conduct was intentional or reckless.

24. Epstein's conduct with a minor was extreme and outrageous, going beyond all bounds of decency.

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

26. Epstein's conduct caused severe emotional distress to Jane Doe. Epstein knew or had

reason to know that his intentional and outrageous conduct would cause emotional distress and damage to Jane Doe, or Epstein acted with reckless disregard of the high probability of causing severe emotional distress to Jane Doe.

27. As a direct and proximate result of Epstein's intentional or reckless conduct, Jane Doe, has suffered and will continue to suffer severe mental anguish and pain.

WHEREFORE, Plaintiff Jane Doe No. 2 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 U.S.C. §2422

28. Plaintiff Jane Doe repeats and realleges paragraphs 1 through 14 above.

29. Epstein used a facility or means of interstate commerce to knowingly persuade, induce or entice Jane 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.

30. Epstein's acts and conduct are in violation of 18 U.S.C. §2422.

31. As a result of Epstein's violation of 18 U.S.C. §2422, Plaintiff has suffered personal injury, including mental, psychological and emotional damages.

32. Plaintiff hired Herman & Mermelstein, P.A., in this matter and agreed to pay them a reasonable attorneys' fee.

WHEREFORE, Plaintiff Jane Doe No. 2 demands judgment against Defendant Jeffrey Epstein for all damages available under 28 U.S.C. §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: September 22, 2008

Respectfully submitted,

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 08-80119-CIV-MARRA

Jane Doe No. 2,

Plaintiff,
vs.

JEFFREY EPSTEIN,

Defendant.

ORDER DENYING MOTIONS AS MOOT

THIS CAUSE is before the Court upon Defendant's Motion for Enlargement of Time to Answer or Otherwise Respond to Complaint (DE 13) and Defendant's Motion to Dismiss Complaint (DE 40). As Plaintiff's Complaint has been replaced by an Amended Complaint, it is hereby

ORDERED AND ADJUDGED as follows:

(1) Defendant's Motion for Enlargement of Time to Answer or Otherwise Respond to Complaint (DE 13) is **DENIED as moot**.

(2) Defendant's Motion to Dismiss Complaint (DE 40) is **DENIED as moot**. This denial is without prejudice to Defendant reasserting the grounds asserted in the motion if he deems it appropriate as to the Amended Complaint.

DONE AND ORDERED in Chambers at West Palm Beach, Palm Beach County, Florida,
this 23rd day of September, 2008.



KENNETH A. MARRA
United States District Judge

copies to:
All counsel of record

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 08-CV-80119-MARRA-JOHNSON

JANE DOE NO. 2

Plaintiff,

v.

JEFFREY EPSTEIN,

Defendant.

DEFENDANT'S, EPSTEIN, MOTION TO DISMISS AND MOTION FOR MORE
DEFINITE STATEMENT DIRECTED TO PLAINTIFF'S AMENDED COMPLAINT

Defendant, JEFFERY EPSTEIN, by and through his undersigned counsel, moves to dismiss and for more definite statement of Plaintiff JANE DOE NO. 2's Amended Complaint. Rules 12(b)(6), and 12(e) and (f), Fed.R.Civ.P. (2008). In support of his motion, Defendant states:

Introduction

Defendant is filing similar motions to dismiss and for more definite statement directed to the Amended Complaints filed against Defendant in this Court in JANE DOE NO. 2, JANE DOE NO. 3, JANE DOE NO. 4 and JANE DOE NO. 5. The motions are directed to the Counts for "Sexual Assault and Battery," and "Coercion and Enticement to Sexual Activity in Violation of 18 U.S.C. §2422" in each of the respective complaints. However, there are distinctions in the four motions filed based on the complaint allegations. For example, Defendant challenges the Plaintiffs' allegations as to assault in all four actions, and challenges the battery allegations in JANE DOE NOS. 2 and 3,

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but not in JANE DOE NOS. 4 and 5. Defendant moves to dismiss the §2422 count in all four actions.

Motion

1. Counts I and III of the Amended Complaint are required to be dismissed for failure to state a claim upon which relief can be granted. Rule 12(b)(6). Plaintiff has failed to allege sufficient factual allegations in the Counts and instead alleges labels and conclusions, and an attempted formulaic recitation of the elements in each Count.

2. In the alternative, Defendant seeks more definite statement of Count I and III. In Count I, the Plaintiff is required to more definitely allege what was done to her; what EPSTEIN said and did, if anything, to create fear and apprehension in Plaintiff; what was the intentional offensive or harmful contact in pleading the elements of assault and battery. In Count III, Plaintiff is required to more definitely state the underlying factual allegations to support her claim as set forth in the statute, 18 U.S.C. §2422(b) and §2455. Rule 12(e). See discussion of law below herein.

3. Also, Plaintiff's reference in Count III to 28 U.S.C. §2255, pertaining to habeas corpus proceedings is required to be stricken as immaterial. Rule 12(f). Plaintiff is required to more definitely state what statutory provision she is relying on. Rule 12 (e).

WHEREFORE, Defendant respectfully requests that this Court dismiss Counts I and III, strike the immaterial statutory reference, and require Plaintiff to more definitely plead the underlying elements of her claims.

Supporting Memorandum of Law
Standard on Rule 12(b)(6) Motion To Dismiss

As established by the Supreme Court in Bell Atlantic Corp. V. Twombly, 127 S.Ct. 1955 (2007), a motion to dismiss should be granted if the plaintiff does not plead

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"enough facts to state a claim to relief that is plausible on its face." *Id.*, at 1974. Although the complaint need not provide detailed factual allegations, the basis for relief in the complaint must state "more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Id.*, at 1965. Further, "[f]actual allegations must be enough to raise a right to relief above the speculative level ... on the assumption that all the allegations in the complaint are true (even if doubtful in fact)." *Id.* On a motion to dismiss, the well pleaded allegations of plaintiff's complaint are taken as true and construed in the light most favorable to the plaintiff. M.T.V. v. DeKalb County Sch. Dist., 446 F.3d 1153, 1156 (11th Cir.2006).

Significantly, the Supreme Court in Bell Atlantic Corp. V. Twombly abrogated the often cited observation that "a complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove not set of facts in support of his claim that would entitle him to relief." *Id.*, (abrogating and quoting Conley v. Gibson, 355 U.S. 41, 45-46, 78 S.Ct. 99, 102, 2 L.Ed.2d 80 (1957)). The Supreme Court rejected the notion that "a wholly conclusory statement of claim [can] survive a motion to dismiss whenever the pleadings le[ave] open the possibility that a plaintiff might later establish some 'set of [undisclosed] facts' to support recovery." *Id.* As explained by the Supreme Court in Bell Atlantic Corp., *supra* at 1664-65:

While a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations, *ibid.*; Sanjuan v. American Bd. of Psychiatry and Neurology, Inc., 40 F.3d 247, 251 (C.A.7 1994), a plaintiff's obligation to provide the "grounds" of his "entitle[ment] to relief" requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do, see Papasan v. Allain, 478 U.S. 265, 286, 106 S.Ct. 2932, 92 L.Ed.2d 209 (1986) (on a motion to dismiss, courts "are not bound to accept as true a legal conclusion couched as a factual allegation"). Factual allegations must be enough to raise a right to relief above the speculative level, see 5 C. Wright & A. Miller, Federal Practice and

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Procedure § 1216, pp. 235-236 (3d ed.2004) (hereinafter Wright & Miller) (“[T]he pleading must contain something more ... than ... a statement of facts that merely creates a suspicion [of] a legally cognizable right of action”), on the assumption that all the allegations in the complaint are true (even if doubtful in fact), see, e.g., Swierkiewicz v. Sorema N. A., 534 U.S. 506, 508, n. 1, 122 S.Ct. 992, 152 L.Ed.2d 1 (2002); Neitzke v. Williams, 490 U.S. 319, 327, 109 S.Ct. 1827, 104 L.Ed.2d 338 (1989) (“ Rule 12(b)(6) does not countenance ... dismissals based on a judge’s disbelief of a complaint’s factual allegations”); Scheuer v. Rhodes, 416 U.S. 232, 236, 94 S.Ct. 1683, 40 L.Ed.2d 90 (1974) (a well-pleaded complaint may proceed even if it appears “that a recovery is very remote and unlikely”).

Pursuant to Rule 12(e), a party may move for more definite statement of a pleading to which a responsive pleading is allowed where the pleading “is so vague or ambiguous that the party cannot reasonably frame a response.” The motion is required to point out the defects and the desired details. Id.

Count I – “Sexual Assault and Battery” is subject to dismissal as Plaintiff has failed to state a claim upon which relief can be granted.

It is well settled that this Court is to apply Florida substantive law in this action. Erie R.Co. v. Tompkins, 58 S.Ct. 817 (1938). 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 v. Battaglia, 258 So.2d 815 (Fla. 1972); and Travelers Indem. Co. v. PCR, Inc., 889 So.2d 779 (Fla. 2004).

An “assault” is an intentional, unlawful offer of corporal injury to another by force, or exertion of force directed toward another under such circumstances as to create a reasonable fear of imminent peril. See Lay v. Kremer, 411 So.2d 1347 (Fla. 1st DCA 1982). It must be premised upon an affirmative act - a threat to use force, or the actual

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exertion of force. See 3A Fla.Jur.2d Assault §1("The essential element of the tort of assault is the violence offered, and not actual physical contact.").

Tort of "battery" consists of the infliction of a harmful or offensive contact upon another with the intent to cause such contact or the apprehension that such contact is imminent. Quilling v. Price, 894 So.2d 1061 (Fla. 5th DCA 2005); Sullivan v. Atlantic Federal Savings & Loan, 454 So.2d 52 (Fla. 4th DCA 1984)("a battery consists of the intentional infliction of a harmful or offensive contact upon the person of another"). See 3A Fla.Jur.2d Assault §1.

With the standard of pleading established in Twombly, supra, in the context of the elements for assault and battery, Plaintiff has failed to state a claim upon which relief can be granted. Rule 12(b)(6). As to the elements of assault, here are no factual allegations as to what was said or done to Plaintiff such that it constituted an "intentional, unlawful offer of corporal injury to another by force, or exertion of force directed toward another under such circumstances as to create a reasonable fear of imminent peril." See ¶12 of Am. Comp. The same is true for the claim of battery. Plaintiff makes the general allegation that "he (Defendant) sexually assaulted Jane." The other allegations in ¶12 pertain to what Plaintiff allegedly did. Under applicable law, Plaintiff is required to give more than labels and conclusions, and a formulaic recitation of the elements of a cause of action. Twombly, supra. Plaintiff is required to allege the facts of what was done to her; what EPSTEIN said and did, if anything, to create fear and apprehension in Plaintiff; what was the intentional offensive or harmful contact?

As noted in the introduction and as this Court is well aware, there is more than one action brought against this Defendant attempting to allege similar sounding claims.

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With all due respect, the details as to a particular claim asserted by a particular Plaintiff are important to give this Defendant fair notice of Plaintiff's claim so he may properly respond. Accordingly, under applicable law, Plaintiff has failed to state a claim for sexual assault and battery.

In the alternative to dismissing Count I, Defendant requests that Plaintiff be required to give more definite statement as to what was done to her; what EPSTEIN said and did, if anything, to create fear and apprehension in Plaintiff; what was the intentional offensive or harmful contact in pleading the elements of assault and battery. Rule 12(e).

Count III – “Coercion and Enticement to Sexual Activity in Violation of 18 U.S.C. §2422” - is subject to dismissal as Plaintiff has failed to state a claim upon which relief can be granted. Rule 12(b)(6). Count III also contains an immaterial reference to 28 U.S.C. §2255, which is required to be stricken and more definitely stated.

Count III of Plaintiff's Complaint attempts to assert a claim for "Coercion and Enticement to Sexual Activity in Violation of 18 U.S.C. §2422." In her prayer for relief in Count III, Plaintiff "demands judgment against Defendant Jeffrey Epstein for all damages available under 28 U.S.C. §2255(a),"

Although the reference to "28 U.S.C. §2255," pertaining to habeas corpus proceedings – federal custody and remedies on motion attacking sentence, is probably a typographical error by Plaintiff, and the reference to "28" was meant to be "18," Defendant requests that Plaintiff correct this error so that Defendant may have fair notice of the claim Plaintiff is attempting to assert. Whether or not the "28" is typographical error, Defendant is still entitled to dismissal of the count.

The applicable version of these statutory provisions, (pre-2006 Amendments, as the Amended Complaint alleges a time period of "in or about 2004-2005," ¶18), provides:

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**CHAPTER 117--TRANSPORTATION FOR ILLEGAL SEXUAL ACTIVITY
AND RELATED CRIMES**

§ 2422. Coercion and enticement

(a) Whoever knowingly persuades, induces, entices, or coerces any individual to travel in interstate or foreign commerce, or in any Territory or Possession of the United States, to engage in prostitution, or in any sexual activity for which any person can be charged with a criminal offense, or attempts to do so, shall be fined under this title or imprisoned not more than 20 years, or both.

(b) Whoever, using the mail or any facility or means of interstate or foreign commerce, or within the special maritime and territorial jurisdiction of the United States knowingly persuades, induces, entices, or coerces any individual who has not attained the age of 18 years, to engage in prostitution or any sexual activity for which any person can be charged with a criminal offense, or attempts to do so, shall be fined under this title and imprisoned not less than 5 years and not more than 30 years.

**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.

Relevant to Plaintiff's complaint, 18 U.S.C. 2255(a) creates a civil remedy for "a minor who is a victim of a violation of section ... 2422 ... of this title and who suffers personal injury as a result of such violation" Plaintiff has failed to plead any factual allegations whatsoever pertaining to violations of 18 U.S.C. 2422. Rather, Plaintiff has alleged conclusory allegations simply attempting to track parts of the statutory language

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in the statute without underlying factual allegations pertaining to the Plaintiff and any conduct by Defendant. See ¶29 of Am. Comp. Plaintiff's allegations, (or lack of factual allegations), are precisely what the standard set forth by the Supreme Court in Bell Atlantic Corp. prohibits – Plaintiff's complaint alleges only "labels and conclusions, and a (partial) formulaic recitation of the elements."

First, the Amended Complaint fails to designate whether Plaintiff is relying on §2422(a) or §2422(b). Second, although the complaint does contain a partial tracking of the language in 18 U.S.C. §2422(b), it contains absolutely no factual allegations concerning the requisite "using the mail or any facility or means of interstate or foreign commerce" by Plaintiff to state a cause of action based on a violation of 18 U.S.C. 2422(b). As well, there are no underlying factual allegations involving this Plaintiff as to the requisite elements that a defendant *knowingly persuaded, induced, enticed, or coerced any individual (Plaintiff in this case) who has not attained the age of 18 years, to engage in prostitution or any sexual activity for which any person can be charged with a criminal offense, or attempted to do so.* See 18 U.S.C. 2422(b); i.e. with what criminal offense could Plaintiff and Defendant have been charged. Again, a Plaintiff cannot simply track the language of a statute without some underlying factual allegations to state a claim upon which relief can be granted. Accordingly, Count III is required to be dismissed, and the reference to 28 USC 2455 be stricken.

In the alternative, Plaintiff should be required to more definitely state the underlying factual allegations to support her claim as set forth in the statute, 18 U.S.C. §2422(b) and §2455.

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Conclusion

As discussed above herein, under the pleading standard established in Twombly, supra, and law concerning the elements of Count I and III, Plaintiff has failed to state claims upon which relief can be granted. Rule 12(b)(6). Plaintiff's complaint lack underlying factual allegations and, thus, Plaintiff is required to more definitely state the requisite factual allegations. Finally, Plaintiff should correct any improper statutory references.

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 6th day of October, 2008:

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Respectfully submitted,


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