

EPSTEIN DECLARATORY JUDGMENT

MEMO to Jay Lefkowitz

Introduction

1. On September 24, 2007, following lengthy negotiations between his counsel and representatives of the United States Attorney's Office for the Southern District of Florida, Plaintiff Jeffrey Epstein signed a Non-Prosecution Agreement (hereinafter "Agreement") with the Defendant United States. An Addendum was added by agreement of the parties and signed on October 30, 2007. A copy of each is appended hereto as Exhibits "A" and "B";
2. Pursuant to and in specific performance of his obligations under the Agreement, Epstein has plead guilty to state felony charges, served ~~completed his~~ 18 month county jail sentence, been registered as a sexual offender, is currently under the restrictions of community control probation under the supervision of the Palm Beach County Probation Department, and has fulfilled certain additional civil obligations as detailed below;
3. Epstein is a defendant in a series of federal civil lawsuits, two of which have been filed by an attorney-representative who was appointed pursuant to the Agreement and who has been paid for his billed over 1.5 million dollars to date for his settlement-related legal fees by Epstein pursuant to his interpretation of paragraph 7 of the Agreement and paragraph ___ of the Addendum to the Agreement, see Jane Doe 101 v Epstein, Civil No _____ and Jane Doe 102 v Epstein, Civil No _____. Additional lawsuits have been filed by others and consolidated for pretrial purposes by this Honorable Court as Jane Doe 2 v Epstein, Civil No _____. This Declaratory Judgment results directly from Epstein's intent and purpose to fulfill and not violate each of his obligations under the Agreement and Addendum, from the Government's repeated refusals to provide specifically sought guidance to Epstein and his counsel regarding how certain ambiguous terms of the Agreement will be construed, from the Government's expressed belief that it can unilaterally declare a breach of the Agreement and, with notice, but not with a right to cure, indict Epstein, and from Epstein's civil counsel's being chilled from advancing principled and even compelling legal positions in defense of the Jane Doe 101 and 102 lawsuits because of their apprehension

- that the Government will rely on such legal positions to unilaterally declare the Agreement null and void, thus jeopardizing their client Epstein to the risk of being criminally indicted even after he has suffered the prejudice detailed in paragraph 2, supra
4. Certain terms of the agreement that have circumscribed, and will imminently further chill Epstein's very ability to defend himself in the lawsuits brought by Jane Does 101 and 102 are ambiguous. For instance, Epstein has agreed to a "waiver of liability" but it is unclear (a) whether this precludes him from any challenge to the bona fides of a claim brought by anyone on the list of claimants, even though the request for the list of claimants , as of the date of the agreement was not disclosed was refused to Epstein prior to his execution of the Agreement and even though the list expanded was modified between Epstein's signing of the Agreement and its disclosure to his counsel nine months later, (b) whether this precludes him from raising an affirmative defense based on a facial defect in the pleading of Jane Doe 102 who "admits" her last contact with Epstein occurred more than six years from the date she filed her lawsuit, thus being time-barred by the civil statute of limitations in 18 USC 2255, (c) whether the waiver extends to more than a single predicate offense thus precluding Epstein from contesting liability no matter how many claims and incidents are alleged when each one seperately would implicate a minimum \$50,000 or \$150,000 damage recovery, (amount changed by legislation after the alleged incidents occurred) (d) whether the waiver is applicable in the absence of an agreement on damages, and (e) whether the waiver precludes Epstein from challenging the complaint as failing to meet the pleading requirements of specificity as does many of the claims of both Jane Doe 101 and 102 who make allegations of conduct they aver "may have occurred", and (f) whether the waiver precludes Epstein from challenging which version of the statute applies i.e. the one in effect at the time of the conduct in question or at the time of the filing of the Complaint when material differences could lead to either dismissals or reduced minimum damage remedies.
 5. Further complicating and chilling the good faith advocacy of Epstein's attorneys in defending the Jane Doe 101 and 102 cases is that the Assistant United States Attorney who executed and remains in charge of implementing the Agreement has (a) declined to review civil pleadings that Epstein's counsel believe are in conformity with the Agreement to notify counsel whether in her view they constitute a

breach of the Agreement thus leaving counsel unable to assure Epstein that their principled advocacy will not result in his criminal indictment, (b) has declined to meet with Epstein's counsel to attempt to explain how the ambiguities referred to above will be interpreted by the Government in the context of concrete civil litigation brought by Jane Doe 101 and 102, and (c) has authored a letter that in essence states that representations made by former United States Attorney Alexander Acosta regarding how certain portions of the Agreement would be interpreted no longer can or should be relied on, see Exhibit "D"

6. In particular, in late 2007, after the Agreement was executed but before Epstein "specifically performed" by entering state criminal pleas and commencing his state custody, counsel for Epstein and the United States Attorney Alex Acosta discussed implementation issues regarding the unorthodox 2255-related provisions of paragraph 8 of the Agreement. Letters were sent to counsel that constituted representations of the United States Attorney's Office regarding how the breadth of the waivers of liability and jurisdiction were to be construed by the Government, see Exhibit "D" (Acosta to Starr). These representations promised Epstein that he would have the right to challenge the bona fides of a claim, that his waiver of "jurisdiction" was instead a waiver of "venue", and that his waiver of liability was to a single predicate. The Government has indicated that it no longer considers itself bound by these representations, see Exhibit "E" (MV to JL)
7. Epstein wants only to conclude his obligations under the Agreement, litigate the civil claims in good faith and in conformity with the terms of the Agreement, and not inadvertently, through counsel's filings or defenses, trigger a unilateral "breach" of the Agreement that he will be precluded from curing before the Government prosecutes him despite his having already suffered irreparable prejudice from having fulfilled his principal obligations under the Agreement including servicing-completing his state prison sentence. Epstein has repeatedly attempted to participate in good faith discussions with the United States Attorney's Office to endeavor to clarify certain of the ambiguities in the civil parts of his Agreement including having his counsel "vet" his pleadings with the Government and having his counsel request meetings with the Government to discuss how the Government believes the Agreement should be implemented in the context of the pending litigation before this Court. These attempts

have been rejected and Epstein is without any recourse except (a) to seek judicial intervention and relief or (b) to waive many fundamental civil litigation rights and defenses only out of fear of a unilateral albeit, to Epstein, improper construction of the Agreement by the Government. The prejudice to Epstein in triggering a “breach” even one committed by his counsel cannot be overstated; the concomitant prejudice of abstaining from filing good faith motions to dismiss that counsel believe (but are not absolutely certain) will not be deemed “breaches” of the waiver provision is likewise extreme. Judicial relief is requested to untangle this Gordian knot

Changes in Draft

6 – add “arising from the joint United States Attorney-FBI investigation of Epstein

8 – add “that it was the intention of the parties that this list be finalized as of the date of the execution of the Agreement. Epstein was required, as a condition of the Agreement, to agree to waive certain civil litigation rights as to each person on the list, in the event they proceeded to suit him exclusively under the provisions of 18 USC 2255 and waive their future rights to bring any additional federal or state claims even though Epstein was precluded from learning their identities until after he entered his plea and was sentenced in the state criminal proceedings, Agreement Par 7 and 8

9,45 – NEEDS STRATEGIC DECISION ON SCOPE OF WAIVER OF LIABILITY

9 – need to add additional sentence that parties agreement regarding appt of attorney representative and limits of Epstein’s obligations to pay pursuant to Agreement

10 – add “that amongst the settlements, for \$50,000, were one brought by the attorney representative for a claimant, ■■■, who was on the list referred to in paragraph 8, supra, but who Epstein could not identify by name or the description of her alleged claim. Such a settlement was made only because of Epstein’s intent to conform to the spirit and letter of the Agreement. The Attorney Representative, in discussions with Epstein, has informed Epstein that other such claims, involving persons whose identity are on the list but unknown to Epstein, would be made.

11 – omit falsely

12 – the “waiver of liability” for a list of claimants whose identities were unknown to Epstein prior to his execution of the Agreement and the “waiver of jurisdiction” are terms that because of their language or context are ambiguous in terms of the implementation of the Agreement.

20 – delete “threatening to indict Epstein”

34 – the inflation of the list occurred between 9-24-07 and 6-30-08

35,36 - delete

38 – detail Patrick settlement and request for payment from claimant who had no sexual contact with Epstein

48 – document Acosta letter to Starr 12-07 providing certain rights, limiting waiver of jurisdiction, right to challenge, waiver to “a offense” + Sloman letter that Govt does not vouch for credibility – and MV letter rescinding this parole evidence

53 – add transcript cite –

54 – redo

59 – delete extortion

64 – change 6-30 to 9-24-07