

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 10-CV-21586-ASG

PODHURST ORSECK, P.A.

Plaintiff,

vs.

JEFFREY EPSTEIN,

Defendant.

**PLAINTIFF'S RESPONSE TO DEFENDANT'S AMENDED NOTICE AND MOTION
FOR LEAVE TO DEPOSIT FUNDS INTO THE REGISTRY OF THE COURT**

Plaintiff, Podhurst, Orseck, P.A., submits this Response to the Amended Notice and Motion For Leave to Deposit Funds Into the Registry of the Court filed by Defendant, Jeffrey Epstein, and asserts as follows.

Plaintiff does not oppose Defendant's Motion to Deposit Funds Into the Court Registry, but offers this Response to provide some context to Defendant's seemingly prompt action in seeking to deposit \$2 million into the Court's registry. Defendant would have this Court interpret this prompt action as evidence of compliance and reasonableness. Those who have dealt with Defendant, however, including Plaintiff, will understand it for what it is -- Defendant's pattern and practice of complying and reacting only when his hand is forced, and only after months of delays and foot dragging. Depositing \$2 million into court is not payment, but an attempt to continue a pattern of non-payment.

This pattern was evident when he was required under the Non-Prosecution Agreement ("NPA") to formalize his plea of guilty and sentencing before a state court and yet delayed that action for several months. He eventually finalized his guilty plea and sentencing, but only after the

United States Attorney's Office informed him in a letter to his counsel that it was "concerned about Mr. Epstein's non-performance," and that the "delayed guilty plea and sentencing...[was] unacceptable to the [United States Attorney's] Office." *See Letter dated December 6, 2007 from United States Attorney's Office to Defendant's counsel, which is attached to this Response as Exhibit 1.*

Defendant's pattern of delay and non-performance under the NPA was also evident when he contested liability in a victim's suit alleging a violation of 18 U.S.C. § 2255 by moving to dismiss all counts in the Complaint. This was a clear breach of the NPA, pursuant to which Defendant not only agreed to not contest liability, but also waived his right to contest jurisdiction so long as the claims were being brought pursuant to § 2255. Only when he was placed on notice by the United States Attorney's Office that "there has been a breach in the filing [of the motion to dismiss]. . . And we are providing notice to Mr. Epstein today," did Defendant withdraw his motion contesting liability. *See Transcript of Hearing before The Honorable Kenneth Marra, dated June 17, 2009, excerpts of which are attached to this Response as Exhibit 2.*

And, finally, this pattern of delay and non-performance is evident by his actions in this case. Despite months and months of refusing to pay Plaintiff most of the fees required to be paid under the NPA, he now promptly seeks to deposit \$2 million into the registry of the Court. Defendant's history, however, shows that he has done this not because he is reasonable or wants to comply, but because his hand has been forced by the filing of this lawsuit.

In sum, while Plaintiff does not object to Defendant's Motion, it is important that his Motion be placed in the context of Defendant's prior pattern and practice. Defendant has been in breach of his NPA since last year, when he completely ceased paying the attorney's fees required to be paid under the NPA. His Motion to deposit the \$2 million is neither evidence of reasonableness nor cures

his continuing breach.

Plaintiff will finally note that Defendant seeks to deposit only \$2 million in the registry of the Court. Plaintiff's Complaint, however, makes clear that it will seek damages in *excess* of \$2 million.

Dated: May 26, 2010

Respectfully Submitted,

PODHURST ORSECK, P.A.
Attorneys for Plaintiff
25 West Flagler Street, Suite 800
Miami, Florida 33130
[REDACTED] / Fax [REDACTED]

By: /s/ Peter Prieto

Steven C. Marks (FB# 516414)
Peter Prieto (FB# 501492)
John Gravante, III (FB# 617113)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on May 26, 2010, 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 all counsel of record either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

/s/ Peter Prieto
Peter Prieto

SERVICE LIST

**Podhurst Orseck, P.A. vs. Jeffrey Epstein
United States District Court
Case No. 10-CV-21586-ASG**

Robert D. Critton, Jr., Esq.
Burman Critton Luttier & Coleman, LLP
Attorneys for Defendant
303 Banyan Boulevard, Suite 400
West Palm Beach, Florida 33401
[REDACTED]



U.S. Department of Justice

United States Attorney
Southern District of Florida

99 N.E. 4th Street
Miami, FL 33132-2111

Facsimile: [REDACTED]

December 6, 2007

DELIVERY BY FACSIMILE

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

Re: Jeffrey Epstein

Dear Jay:

I write in response to your recent e-mails and letters regarding victim notification and other issues. Our Office is trying to perform our contractual obligations under the Agreement, which we feel are being frustrated by defense counsel's objections. The Office also is concerned about Mr. Epstein's nonperformance.

More than three weeks ago we spoke about the failure to set a timely plea and sentencing date. At that time, you assured me that the scheduling delay was caused by the unavailability of Judge McSorley. You promised that a date would be set promptly. On November 15th, Rolando Garcia met with Barry Krisher on another matter, and was told by Mr. Krisher that he had just spoken with Jack Goldberger, and that Mr. Epstein's plea and sentencing were set to occur on December 14, 2007. Since that time, we have tried to confirm the date and time of the hearing in order to include that information in the victim notification letters. You continue to refer to the plea and sentencing as though it will be in January; Mr. Krisher's office has not confirmed any date; and Mr. Goldberger recently told Marie Villafafia that "there is no date."

I must reiterate that a delayed guilty plea and sentencing – now more than two months beyond the original deadline – is unacceptable to the Office. As you will recall, the plea and sentencing hearing originally was to occur in early October 2007, but was delayed until October 26th to allow Mr. Goldberger to attend. It was delayed again until November to allow you to attend. Rather than using your best efforts to insure that the plea and sentencing occur in November, we recently learned that a plea conference had been scheduled with Judge McSorley for November 20, 2007, but was canceled at the request of the parties, not the judge. Judge McSorley has not been away for any extended period, and there is no basis for your assertion that the judge is the cause of



JAY P. LEFKOWITZ, ESQ.
DECEMBER 6, 2007
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any past or future delay. Mr. Epstein currently has four Florida Bar members on his defense team, so attorney scheduling is not an adequate basis for delay.

Three weeks ago I also asked you to provide our Office with the terms of the Plea Agreement with the State Attorney's Office. It is now more than two months since the signing of the Non-Prosecution Agreement and we have yet to see any formal agreement, or even a list of essential terms of such an agreement.

Next, let me address your allegation that attorneys in our office and agents of the FBI have leaked information to the press in an effort to affect possible civil litigation with Mr. Epstein. This is untrue. There has been no contact between any member of the press and any employee of our office or the FBI since you incorrectly accused investigators of telling "Vanity Fair" about Mr. Starr's employment by Mr. Epstein several months ago. We intend to continue to refrain from commenting or providing information to the press. We would ask that your client and all of his representatives do the same.

I also want to address your interpretation of several statements that were included in correspondence – at your insistence – as proof that the designated victims have invalid claims. Let me make clear that each of the listed individuals are persons whom the Office identified as victims as defined in Section 2255, that is, as persons "who, while a minor, was a victim of a violation of section . . . 2422 or 2423 of this title." In other words, the Office is prepared to indict Mr. Epstein based upon Mr. Epstein's "interactions" with these individuals.¹ This conclusion is based upon a thorough and proper investigation – one in which none of the victims was informed of any right to receive damages of any amount prior to the investigation of her claim. The Office agrees that it is not a party to, and will not take a role in, any civil litigation, but the Office can say, without hesitation, that the evidence demonstrates that each person on the list was a victim of Mr. Epstein's criminal behavior. Mr. Starr's letter also suggests that the number of victims to whom Mr. Epstein is exposed by the Agreement is limitless. As you know, early drafts of the Agreement contained a numerical limit of 40 victims, which was removed at your request. The Office repeatedly confirmed that the number would not exceed 40; and the list is significantly shorter than that. Once the list is provided to you, if you have a good faith basis for asserting that a victim never met Mr. Epstein, we remain willing to listen and to modify the list if you convince us of your position.

Finally, let me address your objections to the draft Victim Notification Letter. You write that you don't understand the basis for the Office's belief that it is appropriate to notify the victims. Pursuant to the "Justice for All Act of 2004," crime victims are entitled to: "The right to reasonable, accurate, and timely notice of any public court proceeding . . . involving the crime" and the "right

¹Unlike the State's investigation, the federal investigation shows criminal conduct by Mr. Epstein at least as early as 2001, so all of the victims were minors at the time of the offense.

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not to be excluded from any such public court proceeding . . ." 18 U.S.C. § 3771(a)(2) & (3). Section 3771 also commands that "employees of the Department of Justice . . . engaged in the detection, investigation, or prosecution of crime shall make their best efforts to see that crime victims are notified of, and accorded, the rights described in subsection (a)." 18 U.S.C. § 3771(c)(1).

Additionally, pursuant to the Victims' Rights and Restitution Act of 1990, our Office is obligated to "inform a victim of any restitution or other relief to which the victim may be entitled *under this or any other law* and [the] manner in which such relief may be obtained." 42 U.S.C. § 10607(c)(1)(B). With respect to notification of the other information that we propose to disclose, the statute requires that we provide a victim with the *earliest possible* notice of: the status of the investigation; the filing of charges against a suspected offender; and the acceptance of a plea. 42 U.S.C. § 10607(c)(3). Just as in 18 U.S.C. § 3771, these sections are not limited to proceedings in a *federal* district court. Our Non-Prosecution Agreement resolves the federal investigation by allowing Mr. Epstein to plead to a state offense. The victims identified through the federal investigation should be appropriately informed, and our Non-Prosecution Agreement does not require the U.S. Attorney's Office to forego its legal obligations.

With respect to your assertion that we are seeking to "federalize" the state plea, our office is simply informing the victims of their rights. It does not command them to appear at the hearing or to file a victim impact statement. In fact, the letter recommends the sending of any statement to the State Attorney's Office so that ASA Belohlavek can determine which, if any, statements are appropriate to file with the Court.

Next, you assert that our letter mischaracterizes Mr. Epstein's obligation to pay damages to the victims. To avoid that suggestion, I have asked AUSA Villafafia to simply quote the terms of the Agreement directly into the Notification Letter. We also have no objection to referring to Mr. Epstein as a "sexual offender" rather than a "predator."

We have no objection to using the conjunction "and/or" in referring to the particular offense(s) of which the recipient was a victim. We will not include the language that we take no position as to the validity of any claims. While the Office has no intention to take any position in any civil litigation arising between Mr. Epstein and any individual victim, as stated above, the Office believes that it has proof beyond a reasonable doubt that each listed individual was a victim of Mr. Epstein's criminal conduct while the victim was a minor. The law requires us to treat all victims "with fairness and with respect for the victim's dignity and privacy." 18 U.S.C. § 3771(a)(8). We will not include any language that demeans the harm they may have suffered.

The letter's assertions regarding representation by the Podhurst firm and Mr. Josefsberg are accurate. Judge Davis conferred with Messrs. Podhurst and Josefsberg to insure their willingness to undertake this assignment prior to finalizing his selection.

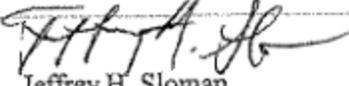
JAY P. LEFKOWITZ, ESQ.
DECEMBER 6, 2007
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Lastly, you object to personal communication between the victims and federal attorneys or agents. We have no objection to sending the letters through the mail² but we will not remove the language about contacting AUSA Villafaña or Special Agent Kuyrkendall with questions or concerns. Again, federal law requires that victims have the "reasonable right to confer with the attorney for the Government in this case." 18 U.S.C. § 3771(a)(5). The three victims who were notified prior to your objection had questions directed to Mr. Epstein's punishment, not the civil litigation. Those questions are appropriately directed to law enforcement. If questions arise related to the civil litigation, AUSA Villafaña and Special Agent Kuyrkendall will recommend that the victims direct those questions to Mr. Josefsberg.

I have attached a revised letter incorporating the changes on which we can agree. Please provide any further comments by the close of business on Friday. In addition, please provide us with a definitive statement, signed by your client, of his intention to abide by each and every term of the Agreement by close of business on Friday, December 7, 2007. By that time, you must also provide us with the agreement(s) with the State Attorney's Office and a date and time certain for the plea and sentencing, which must occur no later than December 14, 2007. There must be closure in this matter.

Sincerely,

R. Alexander Acosta
United States Attorney

By: 
Jeffrey H. Sloman
First Assistant United States Attorney

Enclosure

cc: R. Alexander Acosta, U.S. Attorney
AUSA A. Marie Villafaña

²This is contingent, however, on being able to provide adequate notice of the change of plea and sentencing. The sooner that you schedule that hearing with Judge McSorley, the sooner we can dispatch these letters. If you delay further, we will have to rely on telephone or personal notification.



U.S. Department of Justice

United States Attorney
Southern District of Florida

500 South Australian Ave., Suite 400
West Palm Beach, FL 33401

Facsimile: [REDACTED]

December 6, 2007

DELIVERY BY UNITED STATES MAIL

Miss

Re: Crime Victims' Rights - Notification of Resolution of Epstein Investigation

Dear Miss _____:

Several months ago, I provided you with a letter notifying you of your rights as a victim pursuant to the Justice for All Act of 2004 and other federal legislation, including:

- (1) The right to be reasonably protected from the accused.
- (2) The right to reasonable, accurate, and timely notice of any public court proceeding involving the crime or of any release or escape of the accused.
- (3) The right not to be excluded from any public court proceeding, unless the court determines that your testimony may be materially altered if you are present for other portions of a proceeding.
- (4) The right to be reasonably heard at any public proceeding in the district court involving release, plea, or sentencing.
- (5) The reasonable right to confer with the attorney for the United States in the case.
- (6) The right to full and timely restitution as provided in law.
- (7) The right to proceedings free from unreasonable delay.
- (8) The right to be treated with fairness and with respect for the victim's dignity and privacy.

I am writing to inform you that the federal investigation of Jeffrey Epstein has been completed, and that Mr. Epstein and the U.S. Attorney's Office have reached an agreement containing the following terms.

MISS _____
NOVEMBER 29, 2007
PAGE 2

First, Mr. Epstein agrees that he will plead guilty to two state offenses, including the offense of soliciting minors to engage in prostitution, which will require him to register as a sexual offender for the remainder of his life.

Second, Mr. Epstein has agreed to make a binding recommendation of 18 months' imprisonment to the state court judge who sentences him. Mr. Epstein will serve that sentence of imprisonment at the Palm Beach County Jail.

Third, Mr. Epstein has agreed that he will compensate you for damages you have suffered, under the following circumstances. That portion of the agreement that relates to those claims reads as follows:

7. The United States shall provide Epstein's attorneys with a list of individuals whom it has identified as victims, as defined in 18 U.S.C. § 2255, after Epstein has signed this agreement and been sentenced. Upon the execution of this agreement, the United States, in consultation with and subject to the good faith approval of Epstein's counsel, shall select an attorney representative for these persons, who shall be paid for by Epstein. Epstein's counsel may contact the identified individuals through that representative.
8. If any of the individuals referred to in paragraph (7), *supra*, elects to file suit pursuant to 18 U.S.C. § 2255, Epstein will not contest the jurisdiction of the United States District Court for the Southern District of Florida over his person and/or the subject matter, and Epstein waives his right to contest liability and also waives his right to contest damages up to an amount as agreed to between the identified individual and Epstein, so long as the identified individual elects to proceed exclusively under 18 U.S.C. § 2255, and agrees to waive any other claim for damages, whether pursuant to state, federal, or common law. Notwithstanding this waiver, as to those individuals whose names appear on the list provided by the United States, Epstein's signature on this agreement, his waivers and failures to contest liability and such damages in any suit are not to be construed as an admission of any criminal or civil liability.
9. Epstein's signature on this agreement also is not to be construed as an admission of civil or criminal liability or a waiver of any jurisdictional

MISS _____
NOVEMBER 29, 2007
PAGE 3

or other defense as to any person whose name does not appear on the list provided by the United States.

10. Except as to those individuals who elect to proceed exclusively under 18 U.S.C. § 2255, as set forth in paragraph (8), *supra*, neither Epstein's signature on this agreement, nor its terms, nor any resulting waivers or settlements by Epstein are to be construed as admissions or evidence of civil or criminal liability or a waiver of any jurisdictional or other defense as to any person, whether or not her name appears on the list provided by the United States.

Pursuant to the terms of the agreement and an addendum, to assist you in making such a claim, the U.S. Attorney's Office has asked an independent Special Master to select attorneys to represent you. Those attorneys are Aaron Podhurst and Robert ("Bob") Josefsberg with the law firm of Podhurst Orseck, P.A. They can be reached at [REDACTED]. I anticipate that someone from their law firm will be contacting you shortly. I must also advise you that you are not obligated to use these attorneys. In fact, you have the absolute right to select your own attorney, so you can decide not to speak with Messrs. Podhurst/Josefsberg at all, or you can speak with them and decide at any time to use a different attorney. If you do decide to seek damages from Mr. Epstein and you decide to use Messrs. Podhurst/Josefsberg as your attorneys, Mr. Epstein will be responsible for paying attorney's fees incurred during the time spent trying to negotiate a settlement. If you are unable to reach a settlement with Mr. Epstein, you and Mr. Josefsberg can discuss how best to proceed.

As I mentioned above, as part of the resolution of the federal investigation, Mr. Epstein has agreed to plead guilty to state charges. Mr. Epstein's change of plea and sentencing will occur on December 14, 2007, at _____ a.m., before Judge Sandra K. McSorley, in Courtroom 11F at the Palm Beach County Courthouse, 205 North Dixie Highway, West Palm Beach, Florida. Pursuant to Florida Statutes Sections 960.001(1)(k) and 921.143(1), you are entitled to be present and to make a statement under oath. If you choose, you can submit a written statement under oath, which may be filed by the State Attorney's Office on your behalf. If you elect to prepare a written statement, it should address the following:

the facts of the case and the extent of any harm, including social, psychological, or physical harm, financial losses, loss of earnings directly or indirectly resulting from the crime for which the defendant is being sentenced,

MISS _____
NOVEMBER 29, 2007
PAGE 4

and any matter relevant to an appropriate disposition and sentence. Fl. Stat.
921.143(2).

You also are entitled to notification when Mr. Epstein is released from imprisonment at the end of his prison term and/or if he is allowed to participate in a work release program. To receive such notification, please provide the State Attorney's Office with the following information:

1. Your name
2. Your address
3. Your home, work, and/or cell phone numbers
4. Your e-mail address
5. A notation of whether you would like to participate in the "VINE system," which provides automated notification calls any time an inmate is moved. (To use this system, your calls must go to you directly, not through a switchboard.)

Thank you for all of your help during the course of the investigation. If you have any questions or concerns, please do not hesitate to contact me or Special Agent Nesbitt Kuyrkendall at (561) 822-5946.

Sincerely,

R. Alexander Acosta
United States Attorney

By:

A. Marie Villafañá
Assistant United States Attorney

cc: Special Agent Nesbitt Kuyrkendall, F.B.I.
Ms. Clearetha Wright, Victim-Witness Coordinator, U.S. Attorney's Office

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

4 JANE DOE, et al., WEST PALM BEACH, FLORIDA
5 Plaintiffs, JUNE 12, 2009
6 vs.
7 JEFFREY EPSTEIN,
8 Defendant.
9 x

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

13 APPEARANCES:

14 FOR THE PLAINTIFFS: ADAM D. HOROWITZ, ESQ.
15 Mermelstein & Horowitz
18205 Biscayne Boulevard
Miami, FL 33160
For Jane Doe

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

19 ISIDRO M. GARCIA, ESQ.
20 Garcia Elkins Boehringer
21 224 Datura Avenue
West Palm Beach, FL 33401
22 Jane DOE II.

23 RICHARD H. WILLITS, ESQ.
24 2290 10th Avenue North
Lake Worth, FL 33461
25 For C.M.A.

EXHIBIT

TOTAL ACC

REALTIME TRANSCRIPTION

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

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

FOR THE DEFENDANT:

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

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

ANN MARIE VILLAFANA, ESQ.
Assistant U.S. Attorney
500 East Broward Boulevard
Port Lauderdale, FL 33394
For U.S.A. [REDACTED]

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

REPORTED BY:

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

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

3 May I have counsel state their appearances?

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

6 THE COURT: Good morning.

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

9 THE COURT: Good morning.

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

12 THE COURT: Good morning.

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

15 THE COURT: Good morning.

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

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

21 MR. JOSEFSBERG: I am, Your Honor.

22 THE COURT: Good morning.

23 MR. JOSEFSBERG: Good morning.

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

1 Defense?

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

4 THE COURT: Good morning.

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

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

9 MS. VILLAFANA: Good morning, Your Honor. Ann Marie
10 Villafana for the U.S. Attorney's office.

11 THE COURT: Good morning.

12 Who else do we have on the phone?

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

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

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

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

20 THE COURT: Good morning.

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

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

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

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

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

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

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

19 THE COURT: Okay.

20 MR. EDWARDS: In a separate case.

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

23 MR. EDWARDS: I filed it under seal.

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

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

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

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

8 THE COURT: Thank you.

9 Anyone else have anything to say from the plaintiffs?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 that says I can't do this?

2 MS. VILLAFANA: Correct.

3 THE COURT: That's your position?

4 MS. VILLAFANA: Yes.

5 THE COURT: Thank you.

6 MS. VILLAFANA: Thank you, Your Honor.

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

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

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

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

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