

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 10-CV-21586-ASG

PODHURST ORSECK,

Plaintiff,

v.

JEFFREY EPSTEIN,

Defendant.

Defendant's Reply to Plaintiff's Response to Defendant's Amended Notice and Motion for Leave to Deposit Funds into the Registry of the Court

The defendant, Jeffrey Epstein, responds to the Plaintiff's Response to his Motion for Leave to Deposit Funds into the Registry of the Court as follows:

1. The Plaintiff's Response, in its first sentence, indicates that it does not oppose the relief requested. The remainder of the Response is a gratuitous, unnecessary, inflammatory, immaterial, series of misrepresentations regarding the Defendant's intent in offering to deposit \$2,000,000 into the Court and regarding the history and nature of the fee dispute that is at the core of the current litigation.

2. As background, defendant Epstein executed a Non-Prosecution Agreement with the United States Attorney's Office ("USAO") on September 24, 2007 (hereinafter "Agreement"). The Agreement required that Epstein plead to state offenses and that the USAO agree not to federally prosecute him for various offenses that were under investigation. The Agreement also required that Epstein pay legal fees for an attorney representative, who was to be selected by an independent third party, and provide counsel to a list of individuals which remained secret until after Epstein's state plea nine months after the execution of the Agreement. The fee obligation was not intended to be

unlimited: it was to pay the fees of the attorney representative prior to his electing to file and/or filing "contested litigation" or "any other contested remedy" against Epstein and was to "cease" and not obligate Epstein "to pay the fees and costs of contested litigation filed against him" (Addendum to Agreement, Par. 7C). The fee obligation required that Epstein "pay such attorney representative his or her regular customary hourly rate". The Agreement did not address such issues as whether the attorney representative would be authorized to go outside his firm and hire and pay non-firm lawyers, a significant issue given that the Plaintiff is seeking over \$1,000,000 in fees generated by two non-firm lawyers, one of whom remained employed as a Dade County Assistant State Attorney while billing over \$700,000 for her work on the Epstein matters. The Agreement should be constructed to implicitly limit the fees and costs being charged to Mr. Epstein so that they were reasonable and not unnecessarily duplicative given that Mr. Epstein, at the essence of these highly unorthodox requirements, was being obligated to pay the fees of an attorney who was his adversary both in settlement discussions and thereafter when he filed litigation against him. The Agreement further required that Mr. Epstein waive liability and not contest jurisdiction only when certain expressly delineated conditions precedent were fulfilled by litigating claimants, see, infra, Par 4b. Although the Agreement was silent on the timing of interim payments, and on what procedure would be used to resolve disputes as to whether certain invoiced charges were outside the Agreement's fee obligations, clearly Mr. Epstein was not mandated by the Agreement to simply write a blank check for over \$2,500,000 of fees upon demand or be automatically in breach of the Agreement as contended by Plaintiff. On numerous occasions before the filing of this litigation, Mr. Epstein has offered to

review the invoices with the Plaintiff on a line by line basis, offers that at the end were refused. Mr. Epstein has repeatedly offered to submit the disputed invoices to a neutral third party, and resolve the disputed fee issues without litigation however such offers were refused by Plaintiff. As will be shown, Mr. Epstein has principled disputes with the reasonableness of the fee request, the duplication of work by both firm and non-firm lawyers, the including of fees and costs attributable to contested litigation brought by three of the attorney representative's clients rather than to "consideration of potential settlements" as was contemplated by the Agreement's fee provisions, and to the enormous fee demands made by non-firm lawyers whose retention was unnecessary and unauthorized by the Agreement. Mr. Epstein did not willfully breach the Agreement. He paid \$526,000 of the Plaintiff's interim bills while reserving his right to contest both the fees and costs charged. He is seeking to place \$2,000,000 in Trust as security against any potential future determination by this Court that any additional fees and costs are owed under the Agreement.

3. Mr. Epstein's intent in seeking that his pending Motion be granted is only to fulfill his obligations under the Non-Prosecution Agreement to pay all reasonable settlement-related fees according to the terms of the Agreement. As stated, Mr. Epstein should not be required to issue a "blank check" to pay interim legal bills which clearly include excessive or duplicate charges and further include litigation-related fees and costs that are outside the Agreement. Amongst the principled issues that are raised by the Complaint are as follows:

a) \$1,073,000 of the disputed amount results from charges attributed to two

attorneys who are not members of the attorney representative's firm, one of whom was a sitting state prosecutor at the time. Although Mr. Epstein "agreed to pay the fees of the attorney representative selected ...", NPA Addendum Par. 7C, he never agreed to the employment of outside attorneys much less agreed to the extensiveness of their involvement and the enormity of the fees that they have sought from Mr. Epstein. These fees are not within Mr. Epstein's obligations under the Agreement. Over \$700,000 of these fees (or the equivalent of over 10 years of full-time legal work in this non-firm attorney's ordinary job) are requested for work performed by an Assistant State Attorney for Dade County who was not a civil litigator and had little or no specialized expertise in areas directly relevant to the consideration of civil settlements. These charges are not necessary, reasonable, nor within Mr. Epstein's NPA obligations.

b) A review of just one page of one of the bills, *e.g.*, p. 13 of the invoice of May 11, 2010, reflects that Mr. Epstein is being charged for litigation-related fees when his NPA obligation limits him to paying settlement-related fees only. This single exemplar reflects hourly billing for preparation and attendance of firm members at litigation depositions, for preparation and research into client Jane Doe's Response on March 18-March 22, 2010, just days after the March 9, 2010 filing of the Complaint in Jane Doe 103 v Epstein 9:10cv80309-KAM (SD Fla) by the attorney representative. The charges are clearly litigation related and are in direct conflict with the Agreement's provision that Mr. Epstein's fee obligations to the attorney representative "cease" upon the filing of contested litigation. Further, at p. 23 of the same bill, are charges for court reporter fees for depositions and filing fees for Complaints. Similar litigation-related charges permeate the invoices.

c) A review of the bills shows duplicative and excessive requested fees that are substantially disproportionate to the monetary value of all the settlements reached for the Plaintiff's fifteen clients, including the three who filed litigation.

d) The magnitude of the settlement-related charges are unreasonable particularly given that the attorney representative fee obligations were not agreed to in arms-length negotiation with the Plaintiffs' own clients, but were instead imposed on Mr. Epstein by his Non-Prosecution Agreement. Given this unorthodoxy, there is even greater need that the charges to Epstein must be reasonable, *see, e.g., Red Bull GMBH v. Spacefuel Corp* (1:06cv20948-AJ)(SD Fla).(Court reduces rates charged to losing party in litigation as being unreasonable)

e) Although all of the clients who selected the attorney representative have now settled their cases, Mr. Epstein has not received a final invoice. The interim bills received to date do not include any charges for the two outside attorneys referred to in paragraph 3a for March-May, 2010. The NPA obligates payment but does not require interim payments. Defendant Epstein has at all times informed the Plaintiffs that he reserves the right to submit disputed bills to a neutral third party, *see, e.g.,* letter of Jay Lefkowitz to Robert Josefsberg, September 8, 2009.

4. The claims of Plaintiff contained in his Response that defendant Epstein has violated the NPA are inaccurate, irrelevant and even frivolous:

a) Plaintiff alleges that Epstein failed to formalize his plea of guilty in state court and "delayed that action for several months", Response, pp. 1-2. The reality is that during the time period addressed by Plaintiff, Mr. Epstein, through counsel, with the knowledge and consent of the United States Attorney Mr. Acosta and First Assistant Mr.

Sloman, was pursuing his right to review the Agreement through meetings and filings with the Department of Justice in Washington [REDACTED], a review process that did not end until June 23, 2008 just 7 days before Mr. Epstein entered his state plea.

b) Plaintiff further alleges that Epstein was in "clear breach of the NPA" by filing a Motion to Dismiss contesting the legality of a lawsuit before Judge Marra, Response, p. 2. The waivers of liability and right to contest jurisdiction were not effectuated, as claimed by Plaintiff, "so long as the claims were being brought pursuant to §2255", *Id.* Instead, the NPA limited the waivers to a claimant who "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," Agreement, Par. 8. The plaintiff in question said she was filing only under 18 U.S.C. §2255 but she did not ever agree to waive or relinquish all future claims for damages as required as a condition precedent for any of the NPA waivers of liability and jurisdiction.¹ Nevertheless, when warned by the Government that there was a perceived breach of the NPA in the Motion to Dismiss filing, it was withdrawn on the day of the notice of breach.

5. The Non-Prosecution Agreement contains highly unorthodox provisions including a requirement that Mr. Epstein agree to not contest liability as to a list of "victims" which was not disclosed to him until after his plea and incarceration 9 months after he executed the Agreement. This provision led to settlements with persons who

¹ Additionally, in an authoritative communication by the United States Attorney, R. Alexander Acosta, to Epstein's counsel dated December 4, 2007, the Government agreed that it was the intentions of the parties that the waiver of right to contest subject matter jurisdiction was intended by all parties "to address issues of venue" and that "this Office will not interpret this paragraph as any waiver of subject matter jurisdiction."

could not be verified as even having been at Mr. Epstein's residence or having met Mr. Epstein. Epstein has thus gone beyond the literal terms of the Agreement and declined to contest liability even as to plaintiffs who never relinquished their future right to bring additional claims. But even the spirit of the Agreement does not require that he pay the full amount of every bill when the charges are either unreasonable or duplicative or outside the limiting provisions of the Agreement nor does it prohibit the presentation of fee disputes to the Court so long as Mr. Epstein pays what a Court determines is owed.

6. The defendant wants only to resolve his outstanding fee dispute in conformity with his obligations under the NPA. He requests that the Court grant his now unopposed Motion to place \$2,000,000 in Trust pending a final determination of whether he owes any amounts in addition to the \$526,000 he has already paid the Plaintiffs.

WHEREFORE, the Defendant requests that this Court grant the relief requested and any other relief deemed necessary.

By: /s/ Robert D. Critton
ROBERT D. CRITTON, JR., ESQ.
Florida Bar No. 224162

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 27th day of May, 2010:

Respectfully submitted,

By: /s/ Robert D. Critton
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