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March 5, 2010

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RE: Jeffrey Epstein

Dear Counsel:

We write this letter to renew our request that the United States Attorney's Office provide us, as Mr. Epstein's counsel in the federal NPA matter, with clarity as to what legal issues we can advise his civil counsel can be litigated without causing you to consider the raising of legal issues to be in breach of Mr. Epstein's obligations under paragraph 8 of the NPA. A letter from civil counsel Robert Critton is attached. On February 11, 2010, you advised us that for reasons including the fact that at the time there were "no currently pending cases arising exclusively under 18 USC §2255 as to any of the victims on the identified list" you would "decline to provide any advisory opinions" in response to our requests during our meeting of February 3.

Since February 11, 2010, a lawsuit has been filed by the attorney representative on behalf of Jane Doe 103. Her identity is known by us and she is on the "identified list." Her lawsuit raises only §2255 claims. Although she has not waived her right to file any other state or federal or common law claim so as to fit squarely within the letter of ¶8 of the NPA, she does, in her lawsuit, quote ¶8 and claim rights as a beneficiary of that agreement, see Case No. 10-80309 (S.D. Fla.), Complaint, ¶¶25-26, thus requiring that civil counsel consider

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responsive motions that relate to the scope of waiver of liability that is memorialized in the NPA. Additionally, Mr. Epstein and his counsel have scheduled a meeting to review the attorney representatives outstanding bills but have been told that if there is no settlement agreement, then the attorney representative intends to initiate litigation rather than adopt the Special Master procedure that we referred to in our February 18, 2010 correspondence to you.

It is the intention of Mr. Epstein's civil counsel to not contest that at least one predicate §2255 offense was committed believing that such a "waiver" satisfies, facially, Mr. Epstein's obligations under the NPA, see attached letter from Mr. Critton. As we said during our meeting on February 3, we have an obligation to provide advice to Mr. Epstein's civil counsel, Robert Critton, whether his raising of certain legal challenges to the Complaint will be perceived as being in conflict with Mr. Epstein's NPA obligations. These issues include:

1. Whether Mr. Epstein can contend that any waiver of liability is satisfied by his not contesting the occurrence of a single rather than multiple predicate offenses as to each claimant? This issue is pertinent since Jane Doe 103 has brought six separate claims for §2255 relief each implicating the statutory minimum damage recovery. Amongst the predicates alleged include a predicate offense allegation of a statute that was not even enacted until 2006, i.e., over a year after Jane Doe 103 turned 18, and substantially after her last alleged contact with Mr. Epstein. Any requirement that Mr. Epstein not contest liability for that predicate would violate the *ex post facto* laws. Two other predicates are not supported by trustworthy evidence. It is our contention that Mr. Epstein satisfies his NPA obligations by not contesting that he committed at least one predicate offense. Prior correspondence from your office is not inconsistent with our belief that the required scope of waiver was to a predicate offense in the singular, see, e.g., Mr. Acosta's letter to Ken Starr, December 4, 2007, p.2 ("were Mr. Epstein convicted at trial, the plaintiff-victims would not have to show that a violation of an enumeration section of Title 18 took place")?
2. Whether Mr. Epstein can contend that the statutory provisions of §2255 in effect at the time of the offense (e.g., 2004-5) govern the minimum statutory damage amount (\$50,000 rather than \$150,000) under *ex post facto* laws, see United States v. Scheidt, 2010 W.L. 144837 (E.D. Cal., 2010) (indicating that the statute in effect at the time of the violation governs the minimum damage remedy)?

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3. Whether personal injury is a separate §2255 element from the predicate offense element so that Mr. Epstein could “agree” to the occurrence of a predicate pursuant to his NPA obligations but still contest that the plaintiff was injured, see United States v. Scheidt, *supra* (finding each to be a separate element) and the letter from Mr. Acosta to Mr. Starr, *supra* December 4, 2007 letter at p.2 which agrees that Mr. Epstein can contest the injury element under the NPA (“were Mr. Epstein convicted at trial, the plaintiff-victims in a subsequent Section 2255 suit would still have had some burden to prove that they were ‘victims’”)?

4. Whether the 6-year civil statute of limitations contained in 18 USC §2255 could be raised as an affirmative defense if the facts or allegations demonstrate a greater than 6-year period between the accruing of the cause of action and the complaint, i.e., whether Mr. Epstein can “agree” (for civil §2255 purposes) to the occurrence of a predicate offense and still claim it occurred greater than 6 years before the filing of a Complaint?

5. Whether Mr. Epstein can contest certain claims that are unsupported by trustworthy proof (or in certain cases by any proof at all) so long as he has waives his right to deny the occurrence of at least one predicate offense as required by ¶8 of the NPA?

6. Whether damages are to be awarded based on injury to a plaintiff or based on the number of separately proven claims, see United States v. Baker, 2009 WL 4572785 (E.D.Tex., 2009) where the Court rejected the contention that damages were to be allocated per violation?

We are not asking the government to adopt our legal positions; instead we are simply seeking the right for Mr. Epstein’s civil counsel to raise principled good faith legal issues without fear of the irreparable collateral consequences that would result from any notice by you that you believed that a litigation position adopted by Mr. Epstein’s civil counsel constituted a willful breach. Paragraph 8 and its waiver provisions are not clear (or as stated by Mr. Acosta are “far from simple,” see Mr. Acosta letter to Ms. Sanchez, December 19, 2007). Paragraph 8 does not “speak for itself.” That the provisions of ¶8 are “far from simple” is illustrated in the construction of those paragraphs by Mr. Epstein’s prior counsel, Jay Lefkowitz, who repeatedly advised Mr. Acosta, by letter, that he considered the waiver of liability to be limited to those who agreed to damages, and was inapplicable to those who chose to litigate, see, e.g., letters from Jay Lefkowitz to

Jeff Sloman, Esq.



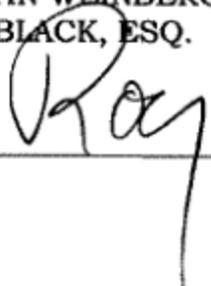
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Alex Acosta October 10, 2007, p.4 and November 29, 2007, p.2. Again, we are only requesting that you inform us whether in the event Mr. Epstein did not contest the commission of at least one predicate – the statutory precondition for the filing of a §2255 lawsuit - you would nevertheless believe that the raising of any of the legal arguments outlined above would violate the NPA

Respectfully submitted,

MARTIN WEINBERG, ESQ.  
ROY BLACK, ESQ.

By  \_\_\_\_\_

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**BC  
LC** | **BURMAN, CRITTON  
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March 4, 2010

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Re: Jeffrey Epstein

Dear Roy and Marty:

This letter represents my thoughts on issues concerning the NPA and my ability to fully defend Mr. Epstein in the civil case recently filed by Mr. Josefsberg.

Based on a State criminal court ruling last summer, the Non-Prosecution Agreement ("NPA") was made available to the public. With regard to the civil aspect of the NPA, specifically paragraphs 7 and 8 (including the Addendum), our interpretation has been substantially different from that of the attorney representative, Mr. Josefsberg, and other attorneys representing alleged victims. They have interpreted those civil portions of the agreement to assist them in their civil cases in a manner which we believe is inconsistent with both the written word and the intent of the NPA.

Mr. Epstein has continued to fulfill his responsibilities under all aspects of the NPA. Mr. Josefsberg has represented or currently represents twelve individuals. Of those twelve individuals, eleven have resolved their claims. Of those eleven claims, only two individuals filed contested litigation, Jane Doe 101 and Jane Doe 102.

Mr. Epstein and Mr. Josefsberg have attempted to resolve the issue associated with attorneys fees and costs. Mr. Epstein has, as you know, paid an excess of \$500,000.00 toward the claimed outstanding fees and costs. It is the belief of all attorneys who represent Mr. Epstein that the fees and costs incurred by the attorney representative (for many attorneys and consultants) are excessive and duplicative. Mr. Epstein provided Mr. Josefsberg a signed Special Master Agreement for resolving the fees/costs issues in February 2010, in substantially the same format which was agreed upon as of December of 2009. The only significant change was use of an out-of-state special master. We were advised by Mr. Josefsberg and Mr. Podhurst that they no longer agree with using that process.

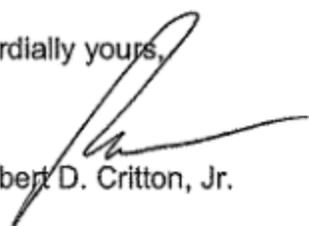
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Jane Doe 103 now has been filed. While Mr. Epstein clearly recognizes his obligation under the NPA to waive liability to a single predicate offense, Mr. Josefsberg has filed an action asserting multiple counts against Mr. Epstein based on multiple predicate acts, including one wherein the statute was not even in effect at the time of the alleged violation. Mr. Josefsberg is also aware and agreed that Mr. Epstein could file a declaratory action related to the interpretation of the NPA. Mr. Josefsberg reserved the right to contest issues that might be raised in such an action.

It is facially unfair, unjust and inconsistent with the spirit and intent of the NPA that Mr. Epstein be precluded from fully defending himself (except for the waiver of liability as to a single act) especially where no facts exist to support the claim, a statute was not in effect at the time of the alleged incident, etc.

It is my understanding that you are sending a letter to the USAO. I have no objection to your including my letter which expresses some of my concerns with which Mr. Epstein is now confronted based on Mr. Josefsberg's interpretation of the NPA. While I am not asking the USAO to confirm Mr. Epstein and his attorneys' interpretation of the NPA and/or its spirit and intent, I would request that the USAO give Mr. Epstein the opportunity to fully defend himself, in the civil suit, except for that which is specifically required of him under the NPA.

Cordially yours,



Robert D. Critton, Jr.

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